

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 39, NUMBER 5
THURSDAY, NOVEMBER 1, 2012

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, October 15, 2012.

ARRS – November 13, 2012 TENTATIVE AGENDA.....	936
REGULATION REVIEW PROCEDURE	941

EMERGENCIES

Department of Revenue.....	942
----------------------------	-----

AS AMENDED

Education Professional Standards Board.....	944
Office of Attorney General	946
Board of Licensure for Professional Engineers and Land Surveyors.....	948
Board of Prosthetics, Orthotics, and Pedorthics	950
Kentucky Board of Emergency Medical Services	952
Department of Fish and Wildlife Resources	965
Department of Agriculture	968
Division for Air Quality	971
Department of Insurance	981
Office of Health Policy	982
Department of Aging and Independent Living	986

AMENDED AFTER COMMENTS

Division of Water	990
Public Service Commission	995
Department for Medicaid Services	1040

PROPOSED AMENDMENTS

Council on Postsecondary Education.....	1043
Teachers' Retirement System.....	1050
Board of Pharmacy.....	1051
Department of Corrections.....	1053
Department of Vehicle Regulation	1055
Department of Aviation	1058
Assistive Technology Loan Corporation.....	1061
Department of Housing, Buildings and Construction	1064
Department for Medicaid Services	1070

NEW ADMINISTRATIVE REGULATIONS

Applied Behavior Analysis Licensing Board.....	1079
Department of Education.....	1082
Department of Insurance.....	1085
Office of Occupations and Professions.....	1089

ARRS Report	1091
OTHER COMMITTEE REPORTS	1094

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	E - 2
KRS Index.....	E - 8
Technical Amendments.....	E -14
Subject Index	E -15

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet November 13, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **936-940** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2012 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 39, Kentucky Register, page 318 (short form: 39 Ky.R. 318).

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	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, NOVEMBER 13, 2012, at 1:00 p.m., Room 149 Capitol Annex

PERSONNEL CABINET
Office of the Secretary

Personnel Cabinet, Classified

101 KAR 2:210 & E. 2013 Plan Year Handbook for the Public Employee Health Insurance Program. ("E" expires 3/13/2013)

FINANCE AND ADMINISTRATION CABINET
Department of the Controller
Office of Financial Management

State Investment Commission

- 200 KAR 14:011. Qualified investments.
- 200 KAR 14:081. Repurchase agreement.
- 200 KAR 14:091. Guidelines for money market instruments.

GENERAL GOVERNMENT CABINET
Board of Pharmacy

Board

- 201 KAR 2:020 & E. Examination. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 2:030 & E. License transfer. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 2:050 & E. Licenses and permits; fees. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 2:061 & E. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 2:205 & E. Pharmacist-in-charge. ("E" expires 1/16/2013) (Deferred from October)

Board of Optometric Examiners

Board

- 201 KAR 5:010 & E. Application for licensure; endorsement. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 5:030 & E. Annual courses of study required. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 5:130 & E. Controlled substances. ("E" expires 1/16/2013) (Deferred from October)

Board of Dentistry

Board

- 201 KAR 8:520. Fees and fines. (Deferred from October) (Deferred from October)
- 201 KAR 8:532 & E. Licensure of dentists. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 8:540 & E. Dental practices and prescription writing. ("E" expires 1/21/2013)(Not Amended After Comments)

Board of Medical Licensure

Board

- 201 KAR 9:081 & E. Disciplinary proceedings. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 9:200 & E. National Practitioner Data Bank reports. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 9:210 & E. Criminal background checks required for all new applicants. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 9:310 & E. Continuing medical education. ("E" expires 1/16/2013) (Deferred from October)

Board of Barbering

Board

- 201 KAR 14:105. Barbering school enrollment and postgraduate requirements.

Board of Speech-Language Pathology and Audiology

Board

- 201 KAR 17:090. Continuing education requirements.
- 201 KAR 17:110. Telehealth and telepractice.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

Board of Nursing

Board

- 201 KAR 20:056 & E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 20:161 & E. Investigation and disposition of complaints. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 20:215 & E. Continuing competency requirements. ("E" expires 1/16/2013) (Deferred from October)

Board of Physical Therapy

Board

- 201 KAR 22:001. Definitions for 201 KAR Chapter 22.
- 201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Board of Podiatry

Board

- 201 KAR 25:011 & E. Approved schools; examination application; fees. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 25:021 & E. Annual renewal of licenses, fees. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 25:031 & E. Continuing education. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 25:051 & E. Procedure for complaints and hearings involving licensees: temporary suspension. ("E" expires 1/16/2013) (Deferred from October)
- 201 KAR 25:090 & E. Prescribing and dispensing controlled substances. ("E" expires 1/16/2013) (Deferred from October)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

- 301 KAR 1:015. Boat and motor restrictions.
- 301 KAR 1:146. Commercial fishing gear.
- 301 KAR 1:155. Commercial fishing requirements.

Game

- 301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 2/23/2013)

Wildlife

- 301 KAR 4:070. Scientific and educational collecting permits.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

Water Quality

- 401 KAR 5:055. Scope and applicability of the KPDES Program. (Amended After Comments)
- 401 KAR 5:060. KPDES application requirements. (Amended After Comments)

Department for Natural Resources

Division of Technical and Administrative Support

General Administrative Procedures

- 418 KAR 1:010. Definitions for 418 KAR Chapter 1.
- 418 KAR 1:020. Administrative procedures of the board.
- 418 KAR 1:031. Repeal of 418 KAR 1:030.
- 418 KAR 1:040. Grant applications.
- 418 KAR 1:050. Procedures for acquisition of land.
- 418 KAR 1:060. Management.
- 418 KAR 1:070. Remedies.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

Office of Instruction

- 704 KAR 3:305. Minimum requirements for high school graduation. (Not Amended After Comments)

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission**

Utilities

- 807 KAR 5:001. Rules of procedure. (Amended After Comments)
- 807 KAR 5:006. General rules. (Amended After Comments)
- 807 KAR 5:011. Tariffs. (Amended After Comments)
- 807 KAR 5:076. Alternative rate adjustment procedure for small utilities. (Deferred from September)

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement**

Elevator Safety

- 815 KAR 4:030. Elevator contractor licensing requirements. (Deferred from October)
- 815 KAR 4:040. Elevator mechanic licensing requirements. (Deferred from October)
- 815 KAR 4:060. Requirements for approval of continuing education courses and providers (Deferred from October)

Fire Protection, Sprinkler Contractors, and Inspectors

- 815 KAR 22:010. Requirements for approval of continuing education courses and providers.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy**

Certificate of Need

- 900 KAR 6:030. Certificate of need expenditure minimums.
- 900 KAR 6:075 & E. Certificate of Need nonsubstantive review. ("E" expires 2/19/2013)
- 900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

**Department for Medicaid Services
Division of Healthcare Facilities Management**

Psychiatric Residential Treatment Facility Services and Reimbursement

- 907 KAR 9:005 & E. Level I and II psychiatric residential treatment facility service and coverage policies. ("E" expires 3/3/2013)
- 907 KAR 9:010 & E. Reimbursement for Level I and II psychiatric residential treatment facility services. ("E" expires 3/3/2013)

Commissioner's Office

Health Care-Acquired Conditions and Provider Preventable Conditions

- 907 KAR 14:005 & E. Health care-acquired conditions and other provider preventable conditions. ("E" expires 1/19/2013) (Amended After Comments)

**Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management**

Institutional Care

- 908 KAR 3:050. Per diem rates.

**Department for Aging and Independent Living
Division of Quality Living**

Aging Services

- 910 KAR 1:260. Kentucky Family Caregiver Program.

**Department for Community Based Services
Division of Child Care**

Day Care

- 922 KAR 2:090. Child-care center licensure.
- 922 KAR 2:100. Certification of family child-care homes.
- 922 KAR 2:110. Child-care center provider requirements.
- 922 KAR 2:120. Child-care center health and safety standards.
- 922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.
- 922 KAR 2:190. Civil penalties.

REMOVED FROM NOVEMBER 2012 AGENDA

FINANCE AND ADMINISTRATION CABINET

**Department of Revenue
Office of Property Valuation**

Ad Valorem Tax; Administration

103 KAR 5:220 & E. Installment payment plan guidelines for third party purchasers of certificates of delinquency. ("E" expires 3/13/2013) (*Comments Received; Hearing requested*)

GENERAL GOVERNMENT CABINET

Board of Pharmacy

Board

201 KAR 2:350 & E. Home medical equipment service providers. ("E" expires 2/16/2013) (*Comments Received; SOC ext.*)

Board of Medical Licensure

Board

201 KAR 9:001 & E. Definitions for terms used in KRS 218A.172. ("E" expires 2/16/2013) (*Comments Received; SOC ext.*)

201 KAR 9:220 & E. Restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing Hydrocodone. ("E" expires 2/16/2013) (*Comments Received; SOC ext.*)

201 KAR 9:250 & E. Registration and oversight of pain management facilities. ("E" expires 2/16/2013) (*Comments Received; SOC ext.*)

201 KAR 9:260 & E. Professional standards for prescribing and dispensing controlled substances. ("E" expires 2/16/2013) (*Comments Received; SOC ext.*)

Board of Nursing

Board

201 KAR 20:057 & E. Scope and standards of practice of advanced practice registered nurses. ("E" expires 2/16/2013) (*Comments Received; SOC ext.*)

Board of Licensed Diabetes Educators

Board

201 KAR 45:010. Fees. (*Comments Received; SOC ext.*)

201 KAR 45:020. Supervision and work experience. (*Comments Received; SOC ext.*)

201 KAR 45:030. Renewal, reinstatement, and inactive status. (*Comments Received; SOC ext.*)

201 KAR 45:040. Continuing education. (*Comments Received; SOC ext.*)

201 KAR 45:050. Code of ethics. (*Comments Received; SOC ext.*)

ENERGY AND ENVIRONMENT CABINET

**Department for Environmental Protection
Division of Water**

Water Quality Standards

401 KAR 10:001. Definitions for 401 KAR Chapter 10. (*Comments Received; SOC ext.*)

401 KAR 10:026. Designation of uses of surface waters. (*Comments Received; SOC ext.*)

401 KAR 10:030. Antidegradation policy implementation methodology. (*Comments Received; SOC ext.*)

401 KAR 10:031. Surface water standards. (*Comments Received; SOC ext.*)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Capital Punishment

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person. (*Comments Received; SOC ext.*)

501 KAR 16:310. Pre-execution medical actions. (*Comments Received; SOC ext.*)

501 KAR 16:330. Lethal injection protocols. (*Comments Received; SOC ext.*)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

**Board of Education
Department of Education**

Office of Learning Support Services

704 KAR 7:160. Use of restraint and seclusion in public schools. (*Comments Received; SOC ext.*)

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

Health Services and Facilities.

902 KAR 20:420 & E. Pain management facilities. (“E” expires 2/16/2013) (Comments Received; SOC ext.)

Division of Audits and Investigations

Controlled Substances

902 KAR 55:110 & E. Monitoring system for prescription controlled substances. (“E” expires 2/16/2013) (Comments Received; SOC ext.)

Department for Medicaid Services

Division of Community Alternatives

Medicaid Services

907 KAR 1:145. Supports for community living services for an individual with an intellectual or developmental disability. (Comments Received; SOC ext.)

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or developmental disability. (Comments Received; SOC ext.)

Division of Community Alternatives

Supports for Community Living Waiver

907 KAR 12:010. New supports for community living waiver service and coverage policies. (Comments Received; SOC ext.)

907 KAR 12:020. Reimbursement for new supports for community living waiver services. (Comments Received; SOC ext.)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(See KRS Chapter 13A for specific provisions)

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

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

Review Procedure

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

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

EMERGENCY ADMINISTRATIVE REGULATIONS

**STATEMENT OF EMERGENCY
103 KAR 3:060E**

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the form necessary to apply for tax amnesty. This administrative regulation must be filed as soon as possible in order to comply with the tax amnesty program time frame established by KRS 131.400(4)(b) and to incorporate by reference the Kentucky Tax Amnesty Application form as may be needed by taxpayers and their representatives to apply for tax amnesty. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because KRS 131.400(4)(b) requires that the tax amnesty program be conducted for a period between sixty (60) to 120 days during the fiscal year ending June 30, 2013.

STEVE BESHEAR, Governor
THOMAS B. MILLER, Commissioner

**FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Processing and Enforcement
(Emergency Administrative Regulation)**

103 KAR 3:060E. Kentucky Tax Amnesty Application.

RELATES TO: KRS 131.400, 131.410, 131.420, 131.425, 131.430, 131.435, 131.440, 131.445

STATUTORY AUTHORITY: KRS 131.130(3), 131.430

EFFECTIVE: September 27, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. KRS 131.430 authorizes the department to promulgate administrative regulations to implement a tax amnesty program. This administrative regulation incorporates by reference a form used by taxpayers to apply for tax amnesty.

Section 1. Kentucky Tax Amnesty Required Form. (1) Revenue Form 10A800, "Kentucky Tax Amnesty Application", shall be completed by taxpayers applying for tax amnesty.

Section 2. Incorporation by Reference. (1) Revenue Form 10A800, "Kentucky Tax Amnesty Application", August 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: September 27, 2012

FILED WITH LRC: September 27, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2012, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the Kentucky Tax Amnesty Application form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers with a form to submit an application for tax amnesty.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) provides that the department shall promulgate administrative regulations necessary to administer Kentucky's tax laws, and KRS 131.430 authorizes the department to promulgate administrative regulations to implement a tax amnesty program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the department in the administration of the Kentucky tax amnesty program by incorporating by reference an application form.

(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: All taxpayers filing applications with the department seeking approval for Kentucky tax amnesty.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing: (i) an application (Kentucky Form 10A800) for Kentucky tax amnesty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Taxpayers applying for amnesty will be required to pay the tax and fifty (50) percent of the interest due the Commonwealth on tax bills that are eligible for amnesty.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have an application form to apply for Kentucky tax amnesty.

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

(a) Initially: There will be a minimal cost initially in the administrative regulation process for the department. A small amount of cost will be incurred to provide the Kentucky Tax Amnesty Application form on the tax amnesty Web site at www.amnesty.ky.gov and on the department's Web site at www.revenue.ky.gov. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be no additional cost for the department on a continuing basis as a result of this administrative regulation.

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

mentation and enforcement of this administrative regulation: No additional funding will be needed for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all taxpayers seeking the department's approval of their Kentucky Tax Amnesty Application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue (department), 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 131.130(3) and KRS 131.430 authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will assist in the generation of additional General Fund and Road Fund revenues as part of the Kentucky Tax Amnesty program. The Department of Revenue's expenditures will increase slightly during the notification of taxpayers of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The application form incorporated by reference in this regulation will assist in the generation of approximately \$60,000,000 during the fiscal year ending June 30, 2013.

(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 tax revenue for the Commonwealth in subsequent years.

(c) How much will it cost to administer this program for the first year? The cost to administer the tax amnesty program is estimated to be three to four million dollars.

(d) How much will it cost to administer this program 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.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As amended at ARRS, October 9, 2012)

16 KAR 3:010. Certification for school superintendent.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 161.020~~

~~requires that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.]~~ KRS 161.028(1)(b) requires that the Educational Professional Standards Board promulgate administrative regulations establishing standards and approval requirements for teacher and other professional school preparation programs. KRS 161.030 requires the board to promulgate administrative regulations establishing requirements for the authorization of a certificate issued under KRS 161.010 to 161.126~~a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board].~~ This administrative regulation establishes the preparation and certification program for school superintendent.

Section 1. Conditions and Prerequisites. (1) The professional certificate for instructional leadership - school superintendent shall be issued to an applicant who has completed:

(a) An approved program of preparation, as required by this administrative regulation and pursuant to 16 KAR 5:010;

(b) The appropriate requirements for certification, as established in 16 KAR Chapter 3 [KAR Title 16]; and

(c) At least two (2) years of experience in a position of school principal, supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of district-wide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board.

(2) The professional certificate for instructional leadership - school superintendent shall be valid for the position of school superintendent ~~or~~and assistant superintendent.

(3) Prerequisites for the program of preparation for the professional certificate for instructional leadership - school superintendent~~;~~ shall include:

(a) Qualifications for a Kentucky teaching certificate;

(b) Admission to the preparation program on the basis of criteria developed by the teacher education institution pursuant to 16 KAR 5:010;

(c) Completion of a master's degree;

(d) 1. Except as provided in subparagraph 2 of this paragraph, completion of the Levels I and II preparation and certification for the position of school principal, or supervisor of instruction; or

2. For a candidate who completed preparation for principal prior to 1988, completion of the assessments for administration; and

(e) Completion of at least three (3) years of full-time teaching experience, including at least 140 days per year.

Section 2. A preparation program for the professional certificate for instructional leadership - school superintendent shall be consistent with the six (6) standards included in "Educational Leadership Policy Standards: ISLLC2008"~~["Interstate School Leaders Licensure Consortium Standards for School Leaders"]~~ and the six (6) standards included in "Technology Standards for School Ad-

ministrators" incorporated by reference in~~found in~~ 16 KAR 3:050~~;~~ Section 3, and incorporated by reference]. (1) Beginning August 1, 2014, each accredited educator preparation institution shall have a formal application procedure for admission to a superintendent preparation program, which shall include the following:

(a) A written letter of recommendation from a supervisor or an education agency representative attesting to the applicant's suitability for school leader;

(b) An admissions portfolio which documents that the applicant demonstrates the following:

1. The ability to improve student achievement;
2. Knowledge of school laws related to school finance, school operations, and personnel matters;
3. The ability to implement curriculum, instruction, and assessment;
4. A commitment to ongoing professional growth;
5. Effective communication skills; and
6. The ability to build relationships, foster teamwork, and develop networks; and

(c) Proof the applicant has completed a master's degree program.

(2) Beginning August 1, 2014, each superintendent preparation program shall:

(a) Utilize a clinical model which requires candidates to:

1. Work in diverse school and district central office settings; and

2. Solve problems based on the school district's needs;

(b) Develop a mentoring plan for each candidate; and

(c) Design a method to assess the effectiveness of a candidate's field experience.

(3) Beginning August 1, 2014, a superintendent preparation program's course work shall include a minimum of twelve (12) credit hours.

(4) Beginning August 1, 2014, a superintendent preparation program's curriculum of study shall include the following:

(a) The study of the roles and responsibilities of a superintendent which includes:

1. Leadership theory and development;
2. The impact of board leadership on student learning;
3. Community engagement focused on student learning;
4. Capacity building;
5. District management;
6. Culturally responsive leadership;
7. Ethics;
8. Time management; and
9. Professional development;

(b) The federal, state, and local laws governing school system administration with an emphasis on the following school functions:

1. Finance;
2. Personnel;
3. Food service;
4. Facilities;
5. Transportation;
6. School safety; and
7. School-based councils; and

(c) Coursework which will assist the candidate to:

1. Develop skills that facilitate rigorous curriculum, engaging instruction, professional development, and a comprehensive assessment system;

2. Implement an aligned, rigorous, standards-based curriculum in every school which prepares all students to be globally competitive for postsecondary education and work;

3. Collaborate with district staff and school leaders to coordinate a system of support that ensures engaging and relevant instruction in every classroom;

4. Ensure that a comprehensive assessment system is appropriately used at the district, school, and classroom level for in-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

formed decision making that improves learning;

5. Work with district and school staff to develop and implement a coordinated system of student academic support for students whose achievement does not meet established benchmarks; and

6. Ensure that the school system has an articulated design for preschool, early childhood, middle childhood, adolescent, and adult education that represents research and best practice.

(5) Beginning August 1, 2014, a superintendent preparation program shall require all candidates to complete a capstone project to be presented to a panel of program faculty and practicing school administrators prior to completion of the program.

Section 3. Issuance and Renewal. (1) The initial professional certificate for instructional leadership - school superintendent shall be issued for five (5) years to a candidate who has completed an approved program of preparation for superintendent at the post-master's level. Application shall be made on Form TC-1, incorporated by reference in 16 KAR 2:010.

(2) Each five (5) year renewal shall require:

(a) The completion of two (2) years of experience as a school superintendent or assistant superintendent;

(b) Three (3) semester hours of additional graduate credit or the equivalent related to the position of school superintendent; or

(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) If a lapse in certification occurs for lack of the renewal requirements, the certificate shall be reissued for a five (5) year period after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program. ~~[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Interstate School Leaders Licensure Consortium Standards for School Leaders", November 2, 1996;~~

~~(b) "Form TC-1, rev. 10/02; and~~

~~(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators.~~

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

CATHY GUNN, Chairperson

APPROVED BY AGENCY: August 6, 2012

FILED WITH LRC: August 10, 2012 at 1 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD (As amended at ARRS, October 9, 2012)

16 KAR 6:030. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020

requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1)(a) The certificate for school principal shall be

valid for serving in the position of principal or assistant principal.

(b) A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal.

(c) A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program as required by 16 KAR 7:020 if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment ~~(6011)~~~~[(4044)]~~ - 160; and

~~(2)(a) Until December 31, 2012, [August 31, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices—eighty-five (85) percent correct responses; or~~

~~(b) Beginning September 1, 2011,] the Kentucky Specialty Test of Instructional and Administrative Practices (1015)[administered by the Educational Testing Service] with no passing score; or~~

~~(b) Beginning January 1, 2013, the Kentucky Specialty Test of Instructional and Administrative Practices (1015) -158.~~

Section 3. The successful completion of the School Leaders Licensure Assessment shall not be required for an applicant who has:

(1) Two (2) years of experience as a certified principal in another state; and

(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required assessments~~[School Leaders Licensure Assessment]~~ on a date established by the Educational Testing Service. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the Educational Testing Service.

(2) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the Educational Testing Service and the Education Professional Standards Board.

(3) An applicant shall seek information regarding the dates and location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. An applicant shall pay all fees assessed by the Educational Testing Service, pursuant to KRS 161.027(4), for:

(1) The required School Leaders Licensure Assessment; and

(2) The Kentucky Specialty Test of Instructional and Administrative Practices. [(1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the Educational Testing Service.

(2)[(a) Until August 31, 2011, an applicant for the Kentucky Specialty Test of Instructional and Administrative Practices shall pay a fee of eighty (80) dollars.

(b) Beginning September 1, 2011,] An applicant for the Kentucky Specialty Test of Instructional and Administrative Practices shall pay all fees assessed by the Educational Testing Service.]

Section 6. An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

(2) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. On an annual or biennial basis, the Education Professional Standards Board shall collect and analyze data provided by the Educational Testing Service through score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

CATHY GUNN, Chairperson

APPROVED BY AGENCY: August 6, 2012

FILED WITH LRC: August 10, 2012 at 1 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(As amended at ARRS, October 9, 2012)

40 KAR 2:330. Mold remediation.

RELATES TO: KRS 367.83801, 367.83803, 367.83805, 367.83807

STATUTORY AUTHORITY: KRS 367.83805(1), 367.83805(2), 367.83807

NECESSITY, FUNCTION AND CONFORMITY: KRS 367.83805(1) requires the Department of Law, after consultation with the Public Protection Cabinet and the Department for Public Health, to establish minimum standards for mold remediation companies that operate in the Commonwealth based on the five (5) general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. KRS 367.83805(2) authorizes customer complaints regarding compliance by mold remediation companies with 40 KAR Chapter 2 promulgated pursuant to KRS 367.83805. This administrative regulation establishes the minimum standards for mold remediation companies that operate in the Commonwealth and incorporates by reference the forms to be utilized by mold remediation companies.

Section 1. Definitions. (1) "Customer" is defined by KRS 367.83803(1).

(2) "Indoor environmental professional" means a person qualified through training, education, and experience to assess mold problems, conduct and review sampling plans and results, and evaluate and develop plans to remediate mold in structures.

(3) "Mold" is defined by KRS 367.83803(3).

(4) "Mold remediation" is defined by KRS 367.83803(4).

(5) "Mold remediation company" is defined by KRS 367.83803(5).

(6) **"Normal fungal ecology" means an indoor environment that may have settled spores, fungal fragments, or traces of actual growth whose identity, location, and quantity are reflective of typical settled spores, fungal fragments, or traces of actual growth for a similar indoor environment.**

(7) "Postremediation evaluation" means the activity conducted by a mold remediation company to determine that the mold remediation has been performed and the mold remediation area, structure, and systems are free of mold contamination.

(8)~~(7)~~ "Postremediation verification" means sampling and analysis conducted to determine that a remediated area has been

restored to a normal fungal ecology.

Section 2. Safety and Health. A mold remediation company shall:

(1) Assure that each principal and employee has ~~[appropriate]~~ training, education, and experience to:

(a)1. Perform the tasks required pursuant to this administrative regulation for mold remediation assigned to that person; and

2. Use and operate equipment, tools, and materials, that will be used or operated by that person during mold remediation or that are required pursuant to this administrative regulation;

(b) The training required by paragraph (a) of this subsection shall include, at a minimum, the following topics related to the mold remediation tasks required pursuant to this administrative regulation:

1. Safety and health;

2. Engineering controls;

3. Containment methods; and

4. Work practices; [perform the tasks required pursuant to this administrative regulation for mold remediation in a professional and workmanlike manner;]

(2) Use ~~[appropriate]~~ engineering controls and work practices to prevent exposure of occupants and the mold remediation company's employees and agents to mold;

(3) Determine the type of containment to use during mold remediation;

(4) Inform the customer in writing of the mold remediation company's determinations regarding containment, including, at a minimum, if the mold remediation company plans to:

(a) Use full or limited containment;

(b) Use negative pressure **so that air pressure within the containment areas is less than in surrounding areas as a measure to prevent cross-contamination;** or

(c) Advise **the customer of other** measures to **be used to** protect **the** occupants;

(5) If the mold remediation company makes a determination not to use containment, advise the customer in writing of the reasons for that determination;

(6) If mold is or will be disturbed, or if workers enter or will enter a containment area, ensure that workers use appropriate protective equipment, including, at a minimum:

(a) A respirator approved by the National Institute for Occupational Safety and Health (NIOSH) **that is appropriate for the environment to be encountered;**

(b) Goggles, if a full face respirator is not used; and

(c) Gloves; and

(7) Prior to contracting for mold remediation, inform the customer in writing:

(a) Of the potential health risks of mold exposure generally, by providing a copy of the most recent edition of the U.S. Environmental Protection Agency's A Brief Guide to Mold, Moisture, and Your Home, Document Number EPA 402-K-02-003;

(b) Of the areas to be vacated for the duration of the remediation and the estimated duration of the remediation;

(c) Of the need to advise tenants and occupants to avoid entering containment areas and work areas for the duration of the remediation **and of any other measures customers should use to protect tenants and occupants;** and

(d) About mold and indoor environmental professionals generally, by providing a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, to the customer prior to or during the initial visit to the property. If the Form MRC-1 is provided to the customer with other items, the Form MRC-1 shall be on top of or prominent among the other items.

Section 3. Contamination Prevention and Project Documentation. (1) Except as provided by subsection (6) of this section, a mold remediation company shall provide the customer with a written mold assessment and remediation plan prior to entering into a mold remediation contract with the customer.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(a) Portions of the mold assessment and remediation plan may be prepared by an independent indoor environmental professional if the customer has engaged one (1).

(b) The written mold assessment and remediation plan shall include, at a minimum:

1. The scope of work, including, at a minimum, the area or areas to be remediated, the tasks to be performed, and a price estimate;

2. An assessment of the source of moisture and, if applicable, measures to take to remedy or manage the moisture source. If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, the mold assessment and remediation plan shall include a statement to that effect;

3. An assessment of the extent of the mold problem to be addressed;

4. The containment and removal techniques that will be used to control the spread of mold contamination, including the written disclosures required by Section 2(4), (5), and (7) of this administrative regulation; and

5. A statement describing how the postremediation evaluation will be conducted, including:

a. Visual examination for removal of mold, and mold-contaminated or water-damaged materials and debris;

b. Examination to determine that surfaces are free of dust;

c. Examination to determine if mold-associated odors have been eliminated; and

d. Sampling or testing for postremediation verification, if recommended. If postremediation verification is to be conducted, it shall be performed by an independent indoor environmental professional paid directly by the customer and reporting directly to the customer.

(2) If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, or if the customer chooses to proceed with mold remediation without remediating and managing the moisture source, or both, a mold remediation company shall not perform mold remediation work for the customer until the mold remediation company obtains a completed, signed, and dated Notice of Moisture Problem, Form MRC-3, from the customer and provides a copy of a completed Form MRC-3 to the customer.

(3) A mold remediation company shall not perform mold remediation work without a written contract. A mold remediation company shall ensure that a contract for mold remediation incorporates the mold assessment and remediation plan required by subsection (1) of this section.

(4) The mold remediation company shall obtain a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, with the customer's dated signature on each form and provide a copy of the completed Form MRC-1 and Form MRC-2 to the customer prior to entering into a contract with the customer for mold assessment or mold remediation.

(5) A mold remediation company shall provide the customer with a written change order to be signed and dated by the customer prior to performing additional work for which there is a cost to the customer or prior to a substantive or material departure from the mold assessment and remediation plan.

(6)(a) If, because of the size and scope of the work to be performed, it is not practicable to provide a mold assessment and remediation plan for a commercial or institutional customer and if the customer requests in writing that work begin prior to receiving the mold assessment and remediation plan, the mold remediation company shall, prior to entering into a mold remediation contract with the customer:

1. Obtain a completed, signed, and dated Commercial or Institutional Customer, Form MRC-4, from the customer and provide a copy of a completed Form MRC-4 to the customer; and

2. Provide the customer a price list that includes the amounts charged for labor and equipment.

(b) The mold remediation company shall provide updates to the customer regarding the work performed and the work not yet performed. The updates shall be provided on a periodic basis as agreed to by the customer.

(7) At the conclusion of the mold remediation work, a mold remediation company shall provide the customer with a written postremediation report that includes, at a minimum, a:

(a) Statement indicating if all visible mold, unrestorable mold-contaminated materials, and debris have been removed;

(b) Statement indicating if all mold-associated odors have been eliminated;

(c) Statement indicating if surfaces are free of dust; **[and]**

(d) **List of any unexpected conditions or events that arose during the mold remediation work that have the potential for:**

1. A significant impact on worker or occupant health or safety; or

2. Interfering with achieving or maintaining an appropriate postremediation condition of the remediated area;

(e) Statement indicating if all salvable structures, systems, and contents have been dried to an appropriate moisture content; and

(f) List of independent indoor environmental professionals, if sampling or testing to verify the mold remediation is required by the contract.

(8) A mold remediation company shall maintain **a copy[copies]** of all documents required by this administrative regulation for a period of at least three (3) years following completion of the mold remediation work.

Section 4. Contamination Control. A mold remediation company shall:

(1) Control mold contamination as close as practical to its source in order to prevent the spread of mold or mold spores or particles;

(2) Minimize dust generation; and

(3) Ensure that mold contamination does not spread to less-contaminated or non-contaminated areas.

Section 5. Contamination Removal. A mold remediation company shall:

(1) Physically remove mold contamination from the structure, systems, and contents to return the structure, systems, and contents within the remediated area to a normal fungal ecology; and

(2) Return the structure, systems, and contents within the remediated area to a clean condition. The structure, systems, and contents shall be considered clean if:

(a) Mold contamination is removed;

(b) Unrestorable mold-contaminated materials are removed;

(c) Debris is removed;

(d) Surfaces are free of dust; and

(e) Remediated areas are free of odors associated with mold.

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

(a) "Read This About Mold Before You Sign A Contract", Form MRC-1, **October[July]** 2012;

(b) "Read This About Indoor Environmental Professionals Before You Sign A Contract", Form MRC-2, **October[July]** 2012;

(c) "Notice of Moisture Problem", Form MRC-3, **October[July]** 2012;

(d) "Commercial or Institutional Customer", Form MRC-4, **October[July]** 2012; and

(e) "A Brief Guide to Mold, Moisture, and Your Home", Document Number EPA 402-K-02-003, Reprinted September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JACK CONWAY, Attorney General

TODD LEATHERMAN, Executive Director

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 11 a.m.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for
Professional Engineers and Land Surveyors
(As amended at ARRS, October 9, 2012)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290(4), 322.290(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 requires the board to establish fees for licensure. This administrative regulation establishes fees for examination, licensure, reinstatement, reissuance, and renewal.

Section 1. Examination Fees. (1) The fees for taking the Principles and Practice of Engineering Examination, the Principles and Practice of Land Surveying Examination, the Fundamentals of Engineering Examination, and the Fundamentals of Land Surveying Examination shall be the actual amounts charged by the National Council of Examiners for Engineering and Surveying.

(2) The board shall reimburse examination fees for qualifying individuals as established in this subsection. To qualify for reimbursement, an applicant shall:

(a)1. Successfully complete with a passing score, an examination listed in subsection (1) of this section;

2.a. Be an active member of the Armed Forces of the United States whose military official home of record was Kentucky on the date the examination was taken; or

b. Be a veteran of the Armed Forces of the United States whose residence for income tax purposes was Kentucky on the date the examination was taken; and

3. Apply for reimbursement in writing to the board within one (1) year following the date the examination was taken, and include proof of:

a. Passing the examination;

b. Service in the Armed Forces of the United States; and

c. Kentucky being either the applicant's military official home of record or the applicant's residence for income tax purposes, on the date the examination was taken; or

(b)1. Successfully complete with a passing score, the Fundamentals of Engineering Examination or the Fundamentals of Surveying Examination for a student currently enrolled in a Kentucky university or college on the date the examination was taken; and

2. Apply for reimbursement in writing to the board within one (1) year following the date the examination was taken, and include proof of:

a. Passing the examination; and

b. Enrollment in a Kentucky university or college on the date the examination was taken. [those qualifying individuals as set out herein below, as follows] [for successfully completing];

(a) For successfully completing with a passing score, an [An] [examination listed in subsection (1) of this section for those applicants who are active members of the Armed Forces of the United States whose military official home of record was Kentucky on the date the examination was taken, or veterans of the Armed Forces of the United States whose residence for income tax purposes was Kentucky on the date the examination was taken. Application for reimbursement shall be made in writing to the board within one (1) year following the date the examination was taken, and shall include proof of passing the examination,] [and of] [service in the Armed Forces of the United States, and Kentucky being either the applicant's military official home of record or the applicant's residence for income tax purposes, on the date the examination was taken.

(b) For successfully completing with a passing score, the [The] [Fundamentals of Engineering Examination or the Fundamentals of Surveying Examination for a student currently enrolled in a Kentucky university or college on the date the examination was taken. Application for reimbursement shall be made in writing to the board within one (1) year following

the date the examination was taken, and shall include proof of passing the examination and of enrollment in a Kentucky university or college on the date the examination was taken.]

Section 2. Endorsement, Renewal, Reinstatement, and Reissuance. (1) Renewal of an individual license shall be \$150 or shall be twenty (20) dollars for retired or inactive status.

(a) Each licensee whose surname begins with the letters A through K shall renew in odd-numbered years.

(b) Each licensee whose surname begins with the letters L through Z shall renew in even-numbered years.

(2) (a) The fee for reinstatement of an expired license or business entity permit that has been expired for less than one (1) year shall be calculated as provided by KRS 322.160(3).

(b) If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall file an application for reinstatement and pay a fee of \$500.

(3) Reissuance of a license after loss or destruction shall be twenty-five (25) dollars.

(4) The fee for licensure by endorsement as a professional engineer or professional land surveyor shall be \$300. The fee shall accompany the application for licensure, which is incorporated by reference in 201 KAR 18:020.

(5) An applicant who fails the two (2) hour state specific examination on the first attempt shall be charged fifty (50) dollars for each subsequent attempt.

Section 3. Fees for Examination and Licensure in Additional Disciplines. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines of engineering for which he has not been licensed.

(2) For each discipline of engineering he shall submit an:

(a) Updated application, which is incorporated by reference in 201 KAR 18:020; and

(b) Examination fee as established in this administrative regulation.

Section 4. Business Entities. (1) The fee for a permit to practice engineering or land surveying in this state shall be \$100 for either permit.

(2) A business entity that applies for a dual permit shall submit \$150.

(3) These fees shall accompany the application.

(4) The annual renewal fee for an individual permit shall be \$100.

(5) The annual renewal fee for a dual permit shall be \$150.

Section 5. Payment of Fees. (1) (a) Fees payable pursuant to Sections 2 and 4 ~~[Section 2]~~ of this administrative regulation shall be paid by check or money order made payable to "Kentucky Board of Licensure" or by major credit card.

(b) Fees payable pursuant to Section 1 of this administrative regulation shall be paid directly to the examination service.

(2) All fees shall be nonrefundable.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: August 13, 2012

FILED WITH LRC: August 13, 2012 at 2 p.m.

CONTACT PERSON: Jonathan Buckley, General Counsel,
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers
and Land Surveyors
(As amended at ARRS, October 9, 2012)

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

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

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(15) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(15) for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar.

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

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

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

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

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

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

(3) "CPDC" means the Continuing Professional Development Committee.

(4) "Professional development hour" or "PDH" means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

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

(6) "Sponsor" means a group, organization, or professional society, offering activities by providers.

Section 2. Continuing Professional Development Committee.

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

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

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

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

(5) The CPDC ~~may~~shall have the authority to rule on all matters concerning continuing professional development for professional land surveyors. Decisions of the CPDC shall be ratified by the board. A licensee who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at a subsequent meeting of the board~~[the board's next meeting]~~.

Section 3. Program Structure. (1) Except as provided by Sections 3(3), 6(1), and 6(2) of otherwise in this administrative regulation, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year, for a total of a minimum of sixteen (16) professional development hours for each reporting period.

(2) The requirement for professional development hours shall include a four (4) hour board sponsored course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. In the year that this course is taken, it shall count as four (4) of the required eight (8) hours.

(3) A maximum of four (4) hours in excess of the sixteen (16)~~[eight (8)]~~ professional development hours required to be earned in a reporting period~~[calendar year]~~ may be carried forward to the next reporting period~~[calendar year]~~.

(4) Failure to earn the sixteen (16)~~[eight (8)]~~ professional development hours per reporting period shall make the licensee ineligible for licensure renewal.

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of the following activities subject to approval by the CPDC and board:

(a) College or university courses;

(b) Seminars;

(c) Tutorials;

(d) In-house programs sponsored by corporations or other organizations;

(e) Correspondence courses;

(f) Televised or videotaped courses~~[with approved supervision]~~;

(g) Distance learning courses~~[with approved supervision]~~;

(h) Teaching or instructing courses, programs, or items specified in paragraphs (a) through (g) of this subsection; this~~[The]~~ credit may be claimed at twice the number of hours permitted participants, except the credit shall~~[but such credit may]~~ not be claimed more than once for teaching or instructing the same or substantially similar course, program, or item;

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

(j) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:

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

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

(c) Be an organized program of learning~~[presented sequentially]~~;

(d) Be conducted by individuals with education, training, or expertise~~[acceptable to the CPDC]~~;

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

(f) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

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

(4) Professional development hours shall be converted as follows:

(a) One (1) university semester hour shall equal fifteen (15) professional development hours.

(b) One (1) university quarter hour shall equal ten (10) professional development hours.

(c) One (1) continuing education unit shall equal ten (10) professional development hours.~~[(5) Unless stated otherwise in this administrative regulation, credit for courses shall be earned at the rate of one (1) professional development hour for each hour of instruction completed, if approved by the CPDC.]~~

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

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

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

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors but may be advertised~~[without a conspicuous notice]~~ that the activity has been "submitted for consideration."

(4) If prior or post approval is desired, a written request for approval of the activity shall be submitted to and received by the CPDC on the [Continuing Professional Development Course Approval Form]~~[]~~ at least forty five (45)~~[sixty (60)]~~ days prior to the meeting date of the CPDC at which the request will be considered~~[presentation of the activity]~~. All other requests for approval of an activity shall be submitted to the CPDC on a "Continuing Professional Development Course Approval Form" at least two (2) weeks before the CPDC meeting which considers the activity for approval].

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

- (a) A detailed outline and objectives;
- (b) A time outline including registration, introductions, welcomes, breaks, and meals;
- (c) Handouts or reference materials needed to evaluate the activity; and
- (d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board reserves the right to send a representative to monitor an activity:

(a) The provider or sponsor shall waive all fees for the CPDC or board representative; and

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

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

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

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

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

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

Section 6. Exemptions and Extensions. The following professional land surveyors may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption:

(1) A professional land surveyor shall be exempted for the reporting period containing the calendar year in which he or she is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year and the exemption or extension shall~~is~~ only be valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board under 201 KAR 18:115, a former professional land surveyor shall earn the continuing professional development hours required for each year the license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. (1) ~~[On the biennial renewal form,]~~ A professional land surveyor shall certify whether or not he or she has complied with the requirements of this administrative regulation on the Electronic License Renewal Application, available at www.kyboels.ky.gov have been met.

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

Section 9. Audits. (1) Compliance with the annual CPD requirements shall be determined through an audit process.

(2) Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board.

(3) Individuals selected for audit shall within thirty (30) days of the board's request, provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:

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

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

(4) Individual licensees shall maintain verification records and documentation for audit purposes ~~for~~shall be maintained by individual licensees for a period of the current reporting period and the two (2) previous reporting periods~~three (3) years after completion of the CPD activity~~.

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

~~(6)~~(4) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the professional land surveyor to disciplinary action.

~~(7)~~(5) An audit resulting in a determination of noncompliance shall subject the professional land surveyor to an automatic audit the next reporting period and each subsequent reporting period until an~~a~~ audit results in a determination of compliance.

~~(8)~~(6) A professional land surveyor who is under investigation pursuant to KRS 322.190 may be subjected to the audit requirements of this section.

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

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

(b) "Electronic License Renewal Application", 2012; is incorporated by reference.

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

B. DAVID COX, Executive Director

APPROVED BY AGENCY: August 13, 2012

FILED WITH LRC: August 13, 2012 at 2 p.m.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(As Amended at ARRS, October 9, 2012)

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013.

RELATES TO: KRS 319B.010, 319B.030, 319B.110

STATUTORY AUTHORITY: KRS 319B.030(1), (2), 319B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1) requires the board to establish licensure categories and issue licenses for persons who wish to practice in this state as a licensed orthotist, licensed prosthetist, licensed orthotist-prosthetist, licensed pedorthist, or licensed orthotic fitter. This administrative regulation establishes the procedure by which those applicants shall apply for a license pursuant to KRS 319B.030.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist-Prosthetist. An applicant for licensure as an orthotist, prosthetist, or orthotist-prosthetist shall submit:

(1) A completed "Application for Licensure", Form BPOP1~~["~~;

(2) A certified copy of the applicant's transcript from an accredited college or university showing a minimum of a baccalaureate degree awarded to the applicant;

(3) A certified copy of the applicant's education program in orthotics, prosthetics, or both from an educational program accred-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

dited by the Commission on Accreditation of Allied Health Education Program;

(4) Proof of completion of a residency meeting the standards established in KRS 319B.010(26) for the discipline for which the applicant has applied;

(5) Proof of the applicant's having obtained a passing score on the American Board of Certification (ABC) examination;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) Detailed work history, including scope of practice, covering the four (4) year period immediately prior to the date of application.

Section 2. Licensure of a Pedorthist. An applicant for licensure as a pedorthist shall submit[meet the following requirements]:

(1) [Submit] A completed "Application for Licensure", Form BPOP1["];

(2) [Submit] A certified copy of high school diploma or comparable credential;

(3) [Submit] Proof of completion of an NCOPE- approved pedorthic education program;

(4) [Submit] Proof of passing the American Board of Certification (ABC) exam;

(5) [Submit] Proof of a minimum of 1,000 hours of pedorthic patient care, 500 hours shall be completed after the NCOPE- approved education program;

(6) [Submit] The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) A[Submit] detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an orthotic fitter shall submit[meet the following requirements]:

(1) [Submit] A completed "Application for Licensure", Form BPOP1["];

(2) [Submit] A certified copy of high school diploma or comparable credential;

(3) [Submit] Proof of completion of an NCOPE- approved orthotic fitter education program;

(4) [Submit] Proof of passing the American Board of Certification (ABC) exam;

(5) [Submit] Proof of a minimum of 1,000 hours of orthotic fitter patient care, 500 hours shall be completed after the NCOPE approved education program;

(6) [Submit] The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) A[Submit] detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 4. Incorporation by Reference. (1) [The following material is incorporated by reference:] "Application for Licensure", BPOP1,["] 07/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

CONTACT PERSON: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(As amended at ARRS, October 9, 2012)

201 KAR 44:100. Inactive status.

RELATES TO: KRS 319B.040(6)

STATUTORY AUTHORITY: KRS 319B.040(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.040(6) authorizes the board to promulgate administrative regulations to establish conditions for inactive licensure status. This administrative regulation establishes procedures for inactive status and reactivation.

Section 1. (1) A licensee may apply for inactive status by submitting:

(a) A completed Application for Inactive License; and

(b) The fee for inactive licensure.

(2) A licensee on inactive status[(1) Upon submitting the "Application for Inactive License, Form BPOP4," the board may grant inactive. While on inactive status, the licensee] shall not engage in the practice of prosthetics, orthotics, or pedorthics.

(3)[(2)] The fee for licensure on inactive status shall be fifty (50) dollars per year.

(4)[(3)] Continuing education requirements shall be waived for licensees on inactive status during the time they remain inactive.

(5)[(4)] If the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he or she has completed six (6) hours of continuing education for the area of discipline in which the licensee is applying within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(6)[(5)] The licensee may~~[with extenuating circumstances,]~~ submit a request to the board to return to active status immediately, with the provision that he shall receive the appropriate number of continuing education hours within six (6) months of the date on which he returns to active status.

(7)[(6)] The reactivation fee for changing from inactive status to active status shall be in compliance with 201 KAR 44:010, Section 2(1) through (3).

Section 2. Incorporation by Reference. (1) "Application for Inactive License", Form BPOP4, 07/2012, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

CONTACT PERSON: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(As Amended at ARRS, October 9, 2012)

201 KAR 44:110 Licensure by endorsement.

RELATES TO: KRS 319B.130

STATUTORY AUTHORITY: KRS 319B.030, 319B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.130

authorizes the board to issue a license to a prosthetist, orthotist, pedorthist, or orthotic fitter possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. The board shall issue a license by endorsement,

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

without examination, to a prosthetist, orthotist, pedorthist, or orthotic fitter currently licensed by examination by the corresponding authority of another state upon:

(1) Verification that the applicant meets all current requirements for licensure as established by KRS 319B.030(1) and 201 KAR 44:090;

(2) Payment of the fee for licensure as established by 201 KAR 44:010; and

(3) Verification of the applicant's license issued by another state that certifies that the license is:

- (a) Active;
- (b) In good standing; and
- (c) Free of pending complaints.

Section 2. Incorporated by Reference. (1) "Application for Licensure by Endorsement", BPOP2, 07/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

CONTACT PERSON: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

GENERAL GOVERNMENT CABINET Kentucky Board of Prosthetics, Orthotics, and Pedorthics (As Amended at ARRS, October 9, 2012)

201 KAR 44:120. Post residency registration

RELATES TO: KRS 319B.030(1)(c)

STATUTORY AUTHORITY: KRS 319B.030(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(c) authorizes the board to establish circumstances and conditions for individuals who have completed the required training and established circumstances by which an individual may continue to practice as a prosthetist or orthotist. **This administrative regulation establishes the requirements for registration for post residency practice.**

Section 1. Eligibility. (1) An orthotic or prosthetic resident, who has successfully completed an NCOPE residency in the appropriate field and prior to completing the American Board for Certification examination, may work in the discipline in which he or she is exam eligible **upon application to and approval by the board.**

(2) **An applicant shall submit to the board:**

(a) **A completed Post Residency Registration form[Submit registration to the board for approval];**

(b) **[Submit]** Documentation of residency completion;

(c) **[Submit]** Documentation of application for examination; and

(d) **[Submit]** A letter from a supervisory licensed practitioner that monitoring of the applicant will continue.

(3) The exemption shall expire fifteen (15) months from the date of completion of the NCOPE residency.

Section 2. Incorporation by Reference. (1) **[The following material is incorporated by reference:]** "Post Residency Registration", Form BPOP3, 07/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

CONTACT PERSON: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (As Amended at IJC on Health and Welfare, October 17, 2012)

202 KAR 7:601. Training, education, and continuing education.

RELATES TO: KRS **271. 311A.050,** 311A.110, 311A.115, 311A.120, 311A.130, **362, 365**

STATUTORY AUTHORITY: KRS 311A.020, **311A.025,** 311A.030, **311A.060,** 311A.110, 311A.115, 311A.120, 311A.125, 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.110, 311A.115, 311A.120, and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 **requires[relates to the provision of]** proper in-service and in-house in-service training and education. **KRS 311A.025 requires the board to establish levels of certification.** This administrative regulation establishes requirements for an organization to be approved by the Board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also **establishes[sets]** standards for the certification and recertification of EMS educators.

Section 1. Education Committee. (1) **The board shall create and recognize a standing committee on EMS Education.**

(2) **The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the state of Kentucky. At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.**

(3) **[A quorum shall be a majority of the seven (7) members of the Education Committee.**

(4) **As a standing committee, the Education Committee shall report directly to the board, with the Chair of the Education Committee tasked to deliver a written as well as verbal report at each regular meeting of the board.**

(5) **The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.**

[Committee.

(6) **The Chair of the Kentucky Board of EMS shall appoint the membership and the officers of the Education Committee as required under 202 KAR 7:020.**

(7) **The Chair of the Kentucky Board of EMS may also, at his discretion, appoint ex officio members to the Education Committee who shall have no authority to raise issues, move the Committee, or vote upon Motions under consideration.**

(8) **The Director of Education for the Kentucky Board of EMS shall serve as an ex officio member with the purpose and intent to provide guidance and act as a resource to the Education Committee and to the full board.**

(9) **The purpose and charge of the Education Committee shall be to:**

(a) **Assist the board in developing a strategic plan for EMS education in the state of Kentucky;**

(b) **Act as a resource for EMS educators and EMS-TEIs in the Commonwealth; and**

(c) **Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education in Kentucky. [(10) No carried motion of the Education Committee shall be final without motion and positive vote by the board.]**

Section 2. EMS-TEI Certification. (1) **Only an entity certified by the board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by**

the Kentucky Board of Emergency Medical Services (KBEMS).

(2) An applicant for certification as an EMS-TEI in Kentucky may be certified at the following levels:

- (a) EMS-TEI 1, which includes EMR;
- (b) EMS-TEI 2, which includes EMR and EMT;
- (c) EMS-TEI 3, which includes EMR, EMT, and AEMT;
- (d) EMS-TEI 4, which include EMR, EMT, AEMT, and EMT-P; ~~or~~

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one (1) or multiple levels of certification ~~at any time~~ during the ~~two (2)~~ ~~five (5)~~ year certification term.

(4) An applicant for ~~a~~ ~~any~~ level of EMS-TEI certification shall meet all requirements of that level.

(5) An applicant for certification at ~~a~~ ~~any~~ level of EMS-TEI ~~in Kentucky~~ shall submit a completed **Training and Educational Institution (TEI), KBEMS-E14, [board-approved initial application]** with the Kentucky Board of Emergency Medical Services (KBEMS)

(6) An applicant shall submit fees as required by 202 KAR 7:030 with the **Training and Education Institution (TEI), KBEMS-E14 [board-approved application for certification as an EMS-TEI]**.

Section 3. Initial Certification Requirements for EMS-TEIs. (1) If an applicant is organized as a business entity **and is required pursuant to KRS Chapters 271, 362, and 365 [required under Kentucky law]** to file with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State that the EMS-TEI is legally able to conduct business in the state.

(2) An applicant shall provide the board with an organizational chart indicating, at a minimum: ~~;~~

(a) The names and addresses of the owner, operator, chief administrative officer, and ~~any~~ other personnel necessary for operation of the entity as an EMS-TEI;

(b) The names and addresses of the EMS-TEI's designated agent for receiving service;

(c) The name and address of the EMS-TEI's medical director; ~~;~~ proof that the medical director is qualified **pursuant to [under]** 202 KAR 7:801; ~~;~~ and a document executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI; and

(d) The name and address of the EMS-TEI's program coordinator.

(3) **Beginning January 1, 2013**, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation **[effective December 31, 2012]**.

Section 4. Certification Periods and Inspections. (1) **An EMS-TEI shall display the current certificate issued through the Kentucky Board of Emergency Medical Services in a prominent place in the EMS-TEI's business.**

(2) Certification of an EMS-TEI shall be valid for a period of ~~two (2)~~ ~~five (5)~~ years **unless [except when]** limited by **[imposition of]** disciplinary action.

(3) ~~(2)~~ Prior to expiration of the ~~two (2)~~ ~~five (5)~~ year certification period, an EMS-TEI may apply for recertification for a subsequent ~~two (2)~~ ~~five (5)~~ year period.

(4) ~~(3)~~ Upon application for recertification, an applicant shall resubmit an **Training and Educational Institution (TEI), KBEMS-E14 [application form and all documents required by the board]**.

(5) ~~(4)~~ An EMS-TEI seeking recertification shall pay all applicable fees **upon [at the time of]** application. Failure to pay fees or subsequent rejection of ~~a~~ ~~any~~ payment method shall result in denial of the **Training and Educational Institution (TEI), KBEMS-E14 [EMS-TEI application]**.

(6) ~~(5)~~ A newly certified EMS-TEI shall undergo an inspection prior to offering the EMS-TEI's first class. Failure to submit to the inspection shall result in immediate revocation of the **certification [application]**.

~~(7) [(6)]~~ **Each inspection [inspections]** shall ensure that the EMS-TEI has met all applicable requirements in Section 5 of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet ~~a~~ ~~any~~ requirement, the EMS-TEI shall correct all deficiencies prior to offering **a class [any classes]**.

~~(8) [(7)]~~ The board shall inspect an EMS-TEI **upon submission of the EMS-TEI's [when the EMS-TEI submits]** notice of intent to upgrade the level of courses offered.

~~(9) [(8)]~~ The board may inspect an EMS-TEI upon submission of **the Training and Educational Institution (TEI), KBEMS-E14, [application]** to renew certification as an EMS-TEI.

~~(10) [(9)]~~ The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.

~~(11) [(10)]~~ Approval of notice of intent to upgrade shall not extend the ~~two (2)~~ ~~five (5)~~ year EMS-TEI certification period.

Section 5. EMS-TEI Operating Requirements. (1) **Each EMS-TEI [EMS-TEIs]** shall maintain files for a period of seven (7) years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines **[as approved by the board]**;

(b) The student attendance sign-in sheets for each course taught, including:

- 1. Lectures;
- 2. Practical skills lessons; and
- 3. Clinical and field rotations; ~~;~~

(c) A master copy of each set of written examinations administered and answer keys for the exams;

(d) A master copy of practical skills examination forms;

(e) A master copy of each course syllabus;

(f) Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;

(g) Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;

(h) Records of all disciplinary actions taken against **a student, if applicable. [any student;]** Records shall include notification to students of the complaint; **responses, if applicable, [any responses]** made by or on behalf of the student; ~~;~~ and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;

(i) For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and if the success or failure of remediation;

(j) A master file of the objectives and competencies to be achieved by students during each educational program; and

(k) Documentation of **another requirement [any other requirements]** that the EMS-TEI has established as part of the offered courses.

(2) Failure of an EMS-TEI to maintain records required by the board **shall [may]** result in disciplinary action against an EMS-TEI.

(3) KBEMS **shall [may]** require an EMS-TEI to submit a copy of the EMS-TEI's annual accreditation report **if [when]** accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered **course [courses]**.

(4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards.

(5) An EMS-TEI shall document in writing the required annual review and ~~any~~ updates resulting from the annual assessment.

(6) Documentation of the annual review shall be in writing, signed by the owner or program coordinator, and maintained in the course or program file.

(7) An EMS-TEI shall assure **that** all physical resources required by the curriculum, including classrooms, skill practice areas, **notices [notice]** of where to purchase or access textbooks, instructional aides, equipment, and supplies **shall be: [are]**

(a) Available at each class session where skills are taught or

practiced;

(b) Adequate in number to allow for practice by students enrolled; and

(c) In good working order and well-maintained.

(8)(6) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(9)(7) The EMS-TEI shall be responsible for knowing and following all federal and state laws and requirements established in 202 KAR Chapter 7 relevant to safeguarding privacy of records, including educational and health records.

(10)(8) The EMS-TEI shall develop and make available to all prospective students a clearly-defined admissions policy and procedure.

(11)(9) An EMS-TEI's admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. Admissions policies and procedures shall include at a minimum:

(a) Tuition rates and any fees associated with the training and education program;

(b) Fees and other costs associated with remediation;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skills practice schedules;

(f) Clinical or field rotation locations with tentative beginning and ending dates;

(g) Participation requirements for each clinical or field rotation site; and

(h) Citations to and language of prohibited actions pursuant to under KRS Chapter 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(12)(10) EMS-TEIs shall establish written policies that provide for:

(a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;

(b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;

(c) A procedure for a student students to withdraw from a course and a clear statement courses, and clear statements of refund policies and the steps necessary for a student to obtain a refund students to obtain refunds of tuition or fees already paid;

(d) Faculty to develop examinations for each course offered; and

(e) The establishment of and adherence to examination procedures and policies;

(f) The requirements for a student students to take and pass examinations in courses the EMS-TEI offers; and

(g) Notification to all students and prospective students of their right to ask for and obtain the pass – fail pass/fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass – fail pass/fail rate shall be calculated for courses given within the last two (2) years.

(13)(11) An EMS-TEI shall assure each student, while participating in a clinical or field rotation, is clearly identified as a student and by first and last name. Identification shall be accomplished by use of:

(a) A nameplate;

(b) A uniform; or

(c) Other publicly apparent means.

(14)(12) EMS-TEIs shall include a chief administrative officer (CAO) or designee who shall:

(a) Administer and oversee the EMS-TEI;

(b) Assure the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into any of the EMS-TEI's programs or courses;

(c) Assure the security of examination results and materials;

(d) Monitor the activities of the EMS-TEI's faculty and students; and

(e) Maintain records and documents and submit reports.

(15) If as required by the board, (13) When applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.

(16)(14) A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum pass rate of sixty (60) thirty (30) percent based upon a measurement of students who have taken the board-approved board approved exam for the first time within the twenty-four (24) months immediately preceding the EMS-TEI's renewal date.

(17)(15) An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 statutory and regulatory requirements, adherence to established educational standards, and the EMS-TEI's process for remediating students who take but fail to pass the board-approved test.

(18) If board's approved test, (16) When an EMS-TEI fails to meet an ongoing level of competence determined according to this section, the EMS-TEI shall be subject to a plan of correction mediated through the office of the board.

(19)(17) An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.

Section 6. Disciplinary Action Against an EMS-TEI. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS 311A.

(2) Discipline off against an EMS-TEI as a certified entity shall does not prevent the board from taking disciplinary action against a certified or licensed individual individuals associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit to KBEMS the documents required by subsection (2) of this section required documents for all EMS courses that lead to licensure or certification by the board.

(2) An EMS-TEI shall submit the following documents to the board office:

(a) Course Notification form; and

(b) Educational Institution Course Roster A list of documents required in this section shall be made available to EMS-TEIs on the board's Web site.

(3) Upon submission of all documents required by subsection (2) of this section required documents for courses that lead to licensure or certification, the office of the board shall assign a number or other identifier to the course.

(4) An EMS-TEI shall notify the board office thirty (30) days prior to the start of a any course. Failure to notify KBEMS shall violate this section of this administrative regulation and may subject the EMS-TEI to disciplinary action under KRS 311A.

(5) A class shall not commence until No class shall commence unless the EMS-TEI has obtained obtain an identification code and notified the board as required in this section.

(6) A Any course that does not meet all requirements of this administrative regulation shall not lead to certification or licensure for the EMS students enrolled in the course.

Section 8. Requirements For All Training and Education Courses. (1) All EMS training and education courses that lead to certification or licensure by KBEMS shall:

(a) Comply with this administrative regulation Be approved by board established procedures;

(b) Not commence until the EMS-TEI has filed all documents required pursuant to Section 7(2) under those procedures, including course notification and other documents required under Section 7 of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required pursuant to under 202 KAR 7:030;

(d) Use the National Emergency Medical Services Educa-

tion Standards – Instructional Guidelines[Education Guidelines current at the time the course is offered].

(e) Teach students the EMS Scope of Practice Model[board approved Scope of Practice].

(f) Reflect EMS-TEI compliance with any changes to the National Education Guidelines or Scope of Practice no later than one (1) year following the change; EMS-TEIs are presumed to know the changes and may be subject to disciplinary action if not in compliance within one (1) year of any change;

(g) Meet the course administrative and faculty requirements in this administrative regulation and as established by the board approved accrediting agency; and

(g)(h) Use lead instructors certified by KBEMS as EMS educators who are minimally certified or licensed at the level of the offered course.

(2) The EMS-TEI may use adjunct faculty for initial certification or licensure courses if the adjunct faculty: [who]

(a) Meets[Meet] one (1) of the requirements established in[of] Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of the program coordinator or certified instructor present and available in the classroom.

(3) The EMS-TEI shall have additional skills educators for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) A certified educator for the first ten (10) students; and

(b) An additional educator or adjunct faculty for each one (1) to ten (10) additional students. Additional adjunct faculty used shall not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught and shall meet at least one (1) requirement established in[of] Section 13 of this administrative regulation.;

(4) The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall: [who]

(a) Be[is] employed by or under written contract with the EMS-TEI to serve as the medical director of the program;

(b) Be[is] routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participate[Participates] in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the accrediting agency standards, policies and guidelines; [as approved by the KBEMS; and]

(e) Provide[Provides] medical consultation and guidance to the course faculty; and

(f) Certifies the skills of all of the EMS-TEI's students who are enrolled in courses leading to certification or licensure.

(5) An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of agreement with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(6) An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical setting.

Section 9. Emergency Medical Responder Training and Education Course Requirements. [(1)] Each Emergency Medical Responder (EMR) training and education course shall follow:

(1):

(a) Follow All training and education requirements established in KRS Chapter[under KRS] 311A and 202 KAR 7:201; and

(2) The National Emergency Medical Services Education Standards – Instructional Guidelines[(b) Follow the current national education standards] for duration of course and individual class segments.

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

nician (EMT) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter[under KRS] 311A and 202 KAR 7:301; and

(b) The National Emergency Medical Services Education Standards – Instructional Guidelines[Follow the current national education standards] for duration of course and individual class segments.

(2) To be eligible for certification as EMTs, each student[students] shall complete a clinical or field rotation that meets the requirements for EMT education as determined by this administrative regulation and the EMS[National Medical Standards] Scope of Practice for an EMT student as approved by the accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for EMTs shall include minimally:

(a) A clinical or field rotation consisting of at least twenty-four (24) hours conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed ambulance service, or other health care facility;

(b) Interviews and assessments of a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording patient history and completing assessment on a prehospital care report form for each of the ten (10) patients required in paragraph (b) of this subsection[(2)(b) of this section].

(4) If a student fails to achieve a[any] goal established for the EMT education program, the EMS-TEI CAO Officer or program director shall[may] require the student to repeat the failed[any] portion of a clinical or field rotation experience.

(5) If[When] a student is required to repeat a[any] portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be[is] provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.

(6) If[When] additional time is required, the notification to the student shall be signed and dated by the student.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs. (1) Advanced-Emergency Medical Technician (A-EMT) training and education course requirements. Each A-EMT training and education course shall:

(a) Include all training and education as required pursuant to KRS Chapter 311A; and[under KRS 311A:]

(b) Follow the National Emergency Medical Services Education Standards – Instructional Guidelines[current national education standards].

(2) To be eligible for certification as A-EMTs, a student[students] shall complete a clinical or field rotation that meets the requirements for A-EMT education as determined by this administrative regulation and the EMS[National Medical Standards] Scope of Practice for an A-EMT [as approved by the board or the appropriate accrediting agency].

(3) The minimum requirements of clinical and field rotations for A-EMTs shall include:

(a) Clinicals or field rotations that occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facility;

(b) Interviews and assessments of a minimum of thirty-five (35) patients, including at least fifteen (15) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the thirty-five (35) patients required in paragraph (b) of this subsection[(2)(b) of this section].

(4) If a student fails to achieve a[any] goal established for the A-EMT education program, the EMS-TEI chief administrative officer

er or program director shall[may] require the student to repeat the failed[any] portion of a clinical or field rotation experience.

(5) If[When] a student is required to repeat a[any] portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be[is] provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.

(6) If[When] the EMS-TEI requires the student to complete additional ride-time, the EMS-TEI shall give the student written notification for the student to sign and date.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements. (1) Each Paramedic training and education course shall:

(a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, and any other Kentucky statutes that place mandates upon paramedic students; and

(b) The National Emergency Medical Services Education Standards – Instructional Guidelines[Follow the current national education standards].

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation and the EMS[National Medical Standards] Scope of Practice for a Paramedic[as approved by the accrediting agency's minimum requirements].

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) Clinicals or field rotations that shall be[are] conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facility[facilities].

(b) Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the seventy-five (75) patients required in subsection (3)(b) of this section.

(4) If a student fails to achieve a[any] goal established for the EMS education program, the EMS-TEI chief administrative officer or program director shall[may] require the student to repeat the failed[any] portion of a clinical or field rotation experience.

(5) If[When] a student is required to repeat a[any] portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be[is] provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.

(6) If[When] additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.

Section 13. Continuing Education. (1) Training and education courses provided to individuals outside the roster of a licensed service and that fulfill the continuing education requirements necessary to recertify or renew a certification or licensure shall be provided by:

(a) An entity certified by KBEMS as an EMS-TEI;

(b) An agency or department having contractual agreements with a KBEMS certified EMS-TEI that is in good standing and not subject to disciplinary action;

(c) A[Any] KBEMS approved symposia, state, national, or

international school;

(d) A KBEMS approved or nationally accredited on-line or distance education provider but which shall not provide more than fifty (50) percent of the total continuing education hours to fulfill the CE requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7[under KRS Chapter 311A or any administrative regulation promulgated by the board]; or

(e) A[Any] course that has been accredited by the board-approved[board approved] accrediting agency for continuing education.

(2) Continuing education courses[offerings] shall:

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

Section 14. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by KBEMS:

(a) A paramedic licensed by the board or licensed or certified in another state;

(b) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards-Instructional Guidelines and [National] EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally-recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other KBEMS approved entity; or

4. A presenter approved by an EMS medical director as uniquely qualified by experience or education; or

5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.

(2) The EMS-TEI or other approved contractual department or agency[departments or agencies] providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of seven (7) years beyond the end date of each EMS Course; and

(b) Maintain all documentation to have met the accreditation agency standards, policies, and guidelines established in this administrative regulation[and guidelines approved by KBEMS].

(3) If requested by the board, the EMS-TEI shall[The EMS-TEI may be required to] submit to KBEMS the required documents for EMS continuing education courses taught within the preceding seven (7) years that lead to re-certification or re-licensure by the KBEMS, including:

(a) Contractual agreements;

(b) The continuing education educator's curriculum vitae;

(c) A completed Educational Institution[Student] Course Roster[?]; and

(d) Objectives and outline for each continuing education course.

Section 15. Pilot Programs. (1) A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.

(2) A pilot program shall involve[involves] specialized training and education as well as associated procedures not otherwise provided for in 202 KAR Chapter 7[administrative regulations].

(3) A[Any] licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.

(4)[The request shall not be approved unless the applicant agency completes all parts of the pilot program packet provided by the office of the board.]

(5)[An authorized entity approved by the board to conduct a pilot program shall agree in writing:]

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the ~~board-established~~**[board-established]** requirements for the pilot program.

~~(5) [(6)]~~ An individual otherwise certified or licensed by the board who successfully completes an approved pilot program ~~shall~~**[may]** perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

~~(6) [(7)]~~ The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. ~~fa~~ Specific and defined event;

2. ~~fa~~ Disaster; or

3. ~~fa~~ Designated directive.

~~(7) [(8)]~~ The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

~~(8) [(9)]~~ The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) Level I – EMR Educator, which ~~certifies~~**[qualifies]** the individual to teach EMR courses or EMR continuing education;

(b) Level II – EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or

(c) Level III – Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.

(d) Level IIIR - Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic ~~shall~~**[may]** only be certified as Level III instructors who teach A-EMTs or paramedics.

(2) ~~Depending on the level of certification sought, a~~**[An]** applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (A-EMT), or a paramedic;

(b) Not be issued a certificate as an EMS educator for a level of instruction higher than their EMS provider certification or license;

(c) Have successfully completed:~~f~~**[i]**

1. The National Association of EMS Educators **Emergency Medical Services Education Standards – Instructional**~~al~~**[National]** Guidelines for educating EMS educators course;

2. A ~~KBEMS-approved~~**[KBEMS-approved]** EMS educator course that meets the objectives of the National Highway Traffic Safety Administration (NHTSA) and ~~is~~ designed to represent a common core for teaching knowledge and skills to assist the education of adult learners; or

3. A Bachelor's Degree or higher in education;

(d) Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an **EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7. [1. An ambulance service;**

2. A medical first response agency such as a fire department or rescue squad;

3. A hospital emergency department or urgent care facility;

4. An industrial emergency response team or service in an industrial first-aid station; or

5. Another environment determined by the KBEMS to have

~~met this requirement;~~

(f) Provide documentation the applicant has assisted with a course that meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision of a certified EMS educator who ~~attests using the board-approved Certified Educator form that the educator~~ has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board ~~pursuant to KRS Chapter~~**[under KRS]** 311A within the past thirty-six (36) months; and

3. The course in which the applicant will assist is at the same level of EMS educator the applicant is seeking;~~f~~**[i]**

(g) Provide evidence of completion of a board sponsored ~~curriculum~~ orientation program;

(h) Submit a completed **EMS Responder Application**~~"Application for EMS Educator Initial Certification"~~ and pay all ~~established~~**[required]** fees;

~~(3) [(i)]~~ If applying to become a Level I or II Educator:

~~a~~**[the applicant shall]**

1.] Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;

~~b~~**[2.]** Submit documented proof that ~~the applicant:~~

1. a. The applicant Completed a minimum of five (5) presentations meeting the objectives of the~~current~~ National Emergency Medical Services Education Standards-Instructional Guidelines and **EMS[National]** Scope of Practice **Model** National education for EMT or EMR as applicable for level of certification;

2. b. The applicant Demonstrated skills from at least five (5) subjects meeting the objectives of the~~current~~ National Emergency Medical Services Education Standards-Instructional Guidelines and **EMS[National]** Scope of Practice **Model** National education for EMT or EMR as applicable for level of certification;

3. c. The applicant Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; ~~and~~

4. d. The applicant Attended a minimum of fifty (50) percent of clock hours of the course; ~~and~~

~~(4) [(i)]~~ If applying to become a Level III Educator:

~~a~~**[the applicant shall]**

1.] Be certified as a paramedic or higher; and

2. b. 2.] Present documented proof of instruction in a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas ~~that~~**[which]** shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries, meeting the objectives of the~~current~~ National Emergency Medical Services Education Standards-Instructional Guidelines and **EMS[National]** Scope of Practice **Model** for paramedic education.

~~(5) [(6)]~~ The expiration date of an EMS educator certification shall correspond to those ~~established in KRS Chapter~~**[set in KRS]** 311A and 202 KAR Chapter 7.

~~(6) Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form~~**[any other administrative regulation relevant to the certification period].**

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as a provider at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Has submitted to the board written evidence of completion of all training and education as required by KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained a minimum of fifty-two (52) contact hours that include at least eight (8) **hours** contact hours on topics related to methods of instruction (MOI). The eight (8) relevant to MOI:

1. May include ~~a board-approved~~**[any board-approved]** and required educator ~~update~~**[updates]**; and

2. ~~Shall be certified in writing by~~ The chief administrative officer of the EMS-TEI employing the instructor **shall provide proof of**

the courses or contact hours if requested to do so in an audit by the board:

(d) Is not subject to discipline pursuant to KRS Chapter 311A;

(e) Has paid fees[any fee] required by 202 KAR 7:030; and

(f) Has submitted to the board a completed and signed EMS Responder Application[application for EMS educator renewal].

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for four (4) years from the date of completion.

(3) The KBEMS office may audit an EMS educator's continuing education and continuing education records.

Section 18. EMS Educator reinstatement. (1) An EMS Educator whose certification has lapsed for a period not exceeding five (5) years may reinstate his certificate. To reinstate a certificate, the EMS educator shall submit:[by submitting]

(a) A completed EMS Responder Application[Educator application];

(b) Evidence of at least sixteen (16) hours of training in methodology of instruction (MOI);

(c) Written evidence of completion of a board-sponsored[board sponsored] EMS Educator orientation course; and

(d) Payment of the reinstatement fee as established[set forth] in 202 KAR 7:030.

[(2)] [An applicant for reinstatement shall not be subject to disciplinary action under KRS 311A.]

[(3)] An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.

Section 19. Transition for Currently Certified Educators. An educator certified after October 2012[Currently-certified educators. (1) Educators certified on the effective date of this administrative regulation] shall be transitioned as follows:

[(1)][a)] Level I EMS instructors shall be certified as Level I educators;

[(2)][b)] Level II Instructors shall be certified as Level II Educators;

[(3)][c)] Currently certified Level III Instructors shall be certified as Level III educators;

[(4)][d)] Level I and Level II shall be certified as Level I and Level II educators; and

[(5)][e)][e)] Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and

[(6)][f)][d)] Level III instructors currently licensed as RNs or physicians shall be certified as Level III educators.

Section 20. EMS Educator Reciprocity. [(1)] A person certified as an EMS instructor in another state or US territory shall be eligible for Kentucky EMS instructor certification upon demonstrating:

[(1)][a)] Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;

[(2)][b)] Proof of four (4) years' educational experience in another state or territory;

[(3)][c)] Submission of a completed EMS Responder Application;

[(4)] [Educator application];

[(d)] Evidence of at least[board approved] sixteen (16) board-approved hours of training in methodology of instruction (MOI);

[(5)][e)] Written evidence of completion of a board-sponsored[board sponsored] EMS Educator orientation course; and

[(6)][f)] Payment of the educator fee as established[set forth] in 202 KAR 7:030. [(2) An applicant for reinstatement shall not be subject to disciplinary action under KRS 311A.]

Section 21. EMS Educator Temporary Certification. (1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the EMS Responder[educator] Application.

(2) A temporary card shall not[No temporary card shall] be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who has[have] not completed the requirements established[appearing] in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification. [(5) No applicant for temporary certification shall be subject to disciplinary action under KRS 311A.]

Section 22. EMS Evaluator. (1) An applicant for certification as an EMS evaluator shall:

(a) 1. Be currently certified as a Level I, Level II, or Level III EMS educator; or

2. [(b)] Hold current unrestricted licensure in a[any] state as a physician;

[(b)][and(c)] Have completed a board-approved evaluator training program;

[(c)][d)] Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;

[(d)][e)] Submit a completed EMS Responder Application; and["Application for EMS Evaluator";]

[(e)][f)] Have paid all fees required by 202 KAR 7:030 for approved by the board; and

[(g) Not be subject to discipline pursuant to KRS 311A.]

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license[their licenses].

(3) An EMS evaluator shall be certified as:

(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is[are] not also a licensed or certified EMS provider shall[providers may] evaluate paramedics only. A person certified as an A-EMT may[Persons certified as A-EMTs are allowed to] evaluate A-EMTs, EMTs, and EMRs.

(4) An Individual shall not be endorsed as an EMS evaluator at a[any] level greater than the level at which certified or licensed as an EMS educator[EMS educators].

Section 23. Renewal of EMS Evaluator Endorsement. [(1)] A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:

[(1)][a)] Maintains current state certification or licensure as a provider;

[(2)][b)] During the certification period, participates in a minimum of two (2) separate evaluations on two (2) separate dates or attends a board-sponsored[board sponsored] evaluator class;

[(3)][c)] Is not subject to discipline pursuant to KRS Chapter 311A;

[(4)][d)] Submits to the board a completed EMS Responder Application[Application for Renewal of EMS Evaluator Endorsement]; and

[(5)][e)] Pays all fees required by 202 KAR 7:030 for approved by the board].

Section 24. Educator and Evaluator Oversight. [(1)] KBEMS may conduct scheduled or, if part of an official investigation, unscheduled visits to an EMS educator's classroom or to an EMS evaluation site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7[the administrative regulations], instructional quality, and evaluative standards required in this administrative regulation.

Section 25. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Training and Educational Institution (TEI)", KBEMS-E14, July 2012;

(b) "Course Notification", KBEMS-E22, September 2012;

(c) "Educational Institution Course Roster", KBEMS-E23, September 2012;

(d) "National Emergency Medical Services Education Standards – Instructional Guidelines", National Highway Traffic Association, DOT HS 811 077A, January 2009;

(e) "EMS Scope of Practice Model", National Highway Traffic Association, DOT HS 810 657, February 2007;

(f) "EMS Responder Application", KBEMS-E1, September 2012;

(g) "Certified Educator", KBEMS-E24, September 2012; and

(h) "Educator Practical Requirements", KBEMS-E20, July 2012, ["EMS Responder Application" KBEMS E1 (9/2010);

(b) "Proof of Lecture Form" KBEMS 04-2004; and

(c) "Instructor Certification Packet" (5/2010)]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Community and Technical College, Office for the Kentucky Board of Emergency Medical Services, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m.] Section 4. EMS-TEI Requirements. (1) Only an entity approved by the Board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by the Board.

(2) An entity that previously was certified as an EMS-TEI and had that certification revoked may be eligible to apply for certification as an EMS-TEI one (1) year after the expiration date of revocation.

(3) An applicant shall file a completed Board-approved application with the KBEMS office for certification as an EMS-TEI.

(4) Each EMS-TEI shall have:

(a) A chief administrative officer or designee who shall:

1. Be responsible for the planning, administration and oversight of the EMS-TEI;

2. Assure the quality and credentials of the program coordinator and students accepted into any program conducted by the EMS-TEI;

3. Assure the security of examination results and materials;

4. Randomly monitor the activities of the faculty and students;

5. Maintain records and documents and submit reports required by the Board; and

6. Serve as a member of the course faculty, if appropriately credentialed; and

(b) A program coordinator for paramedic training courses or lead instructor for first responder or EMT training courses who shall:

1. Assure the quality of content and presentation of course material to the student body;

2. Assure the quality and credentials of the instructional staff, adjunct faculty, examiners, and proctors;

3. Assure the quality and security of student examinations;

4. Monitor the activities of the faculty and students during the didactic, skills, and clinical or field internship and summative field evaluation phases of the educational program; and

5. Serve as a member of the course faculty, if appropriately credentialed.

(5) The chief administrative officer may also simultaneously serve as the program coordinator or lead instructor.

(6) An EMS-TEI may require competency evaluations of technical skills performance, knowledge base, or presentation skills of any staff member or potential staff member.

Section 2. EMS-TEI Certification Periods. (1) The approval of an EMS-TEI shall be valid for a period of five (5) years, notwithstanding disciplinary action as discussed in this administrative regulation.

(2) At the end of the initial five (5) year approval period, an EMS-TEI may apply for recertification for a subsequent five (5) year period.

(3) An EMS-TEI may choose to surrender its certification prior

to the end of a certification period by notifying the Board in writing of the intent to do so and the intended effective date of the surrender.

Section 3. EMS-TEI Responsibilities. (1) The EMS-TEI shall maintain on file for a period of five (5) years beyond the ending date of the program:

(a) A complete, curriculum vitae that was current at the beginning date of the EMS course. The curriculum vitae shall include a listing of academic preparation, clinical experience, current certifications and licenses for each faculty member. The EMS-TEI shall be responsible for verifying information contained on an instructor's curriculum vita;

(b) Health records for students that may be required by an EMS-TEI or through written clinical, field internship, or summative field evaluation affiliation agreements;

(c) Records of all disciplinary actions taken against a faculty member, which shall include each response or action taken as a result of a complaint or grievance; and

(d) Documentation of any other requirements as may be established by the EMS-TEI.

(2) An EMS-TEI shall assure that physical resources as required by the curriculum, including classrooms, skill practice areas, textbooks, instructional aids, equipment, and supplies are:

(a) In good working condition;

(b) Available at each class session where skills are taught or practiced; and

(c) Adequate in number for the number of students enrolled in the program to have sufficient opportunity for skills practice.

(3) The health and safety of patients, students and faculty members shall be protected while participating in educational activities.

(4) A student or a faculty member shall maintain proper personal and professional conduct during classroom and clinical or field internship or summative field evaluation activities.

(5) An EMS-TEI shall develop and make available to all prospective students a clearly defined admission policy and procedure, which shall include specific requirements for admission, including:

(a) Academic requirements;

(b) Health-related requirements; and

(c) Admission prerequisites.

(6) An EMS-TEI shall disclose to an applicant for admission:

(a) Accurate information regarding program requirements;

(b) Tuition and fees including remediation fees or other costs associated with the training and education program;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skill practice schedules;

(f) Clinical or field rotation locations with tentative beginning and ending dates and participation requirements for each site;

(g) Board certification or licensure requirements for the level of training and education being offered; and

(h) Prohibited actions described in KRS Chapter 311A that provide grounds for a sanction against an individual making application for certification or licensure by the Board, as described at KRS 311A.050.

(7) An EMS-TEI shall establish and maintain written policies to ensure that:

(a) Announcements and advertising accurately reflect the courses offered;

(b) A procedure exists that allows complaints and grievances to be processed if filed by an applicant, a student, or a faculty member;

(c) There is a process for a student to withdraw from a course, and, if allowed, obtain a refund of tuition or fees paid;

(d) Examinations are developed for each course; and

(e) There are established and maintained passing requirements and examination policies for each course offered by the EMS-TEI.

(8) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified by name and student status by the use of:

(a) A nameplate;

- (b) A uniform; or
- (c) Other apparent means.
- (9) An EMS-TEI shall maintain, for at least five (5) years beyond the date of the last classroom session of each EMS course:
 - (a) The student attendance sign-in sheets for each course taught including:
 - 1. Lectures;
 - 2. Practical skill lessons; and
 - 3. Clinical and field rotations;
 - (b) A master copy of written examinations and answer keys administered for each course taught;
 - (c) A master copy of practical skill examination forms used during each course taught;
 - (d) A master copy of the current course syllabus for the courses taught;
 - (e) Health records for students that may be required by an EMS-TEI or through written clinical, field internship, or summative field evaluation affiliation agreements;
 - (f) Records of all disciplinary actions taken against a student which shall include each response or action taken as a result of a complaint or grievance;
 - (g) Remediation activity for each student enrolled, including how the specific remediation was accomplished and if the process was successful; and
 - (h) A master file of the objectives and competencies to be achieved by students during each educational program. The file shall be reviewed annually by the EMS-TEI and updated as necessary.

Section 4. Disciplinary Action Against an EMS-TEI. (1) The Board shall notify the chief administrative officer of an EMS-TEI, by certified mail, of any intent to pursue disciplinary action against the EMS-TEI.

(2) The Board may take disciplinary action against an EMS-TEI, if:

- (a) During a twenty-four (24) month period, an EMS-TEI's cumulative pass rate for initial training and the education programs offered falls below sixty-seven (67) percent. The pass rate percentage shall be determined by dividing the number of students that complete the certification or licensure testing process within the required time frame by the number of students who apply to participate in the certification or licensure exams;
- (b) An inspection or investigation by the KBEMS office determines the EMS-TEI has not met the requirements of any section of this administrative regulation;
- (c) An EMS-TEI is on probationary status and fails to meet requirements established by the Board;
- (d) The faculty or a staff member reproduces or reconstructs, or attempts to reproduce or reconstruct, any portion of an examination for the purpose of assisting a student to cheat or create an unfair advantage for one (1) student over another student on the examination;
- (e) The faculty or a staff member disseminates information for purposes of reproduction or reconstruction of any portion of an examination in order to assist a student to cheat or create an unfair advantage for one (1) student over another student on the examination;
- (f) The faculty member or a staff member cheats, or assists students to cheat or create an unfair advantage for one (1) student over another student, on an examination;
- (g) The EMS-TEI falsifies a record of education, training, or continuing education;
- (h) The EMS-TEI fails to pay a fee or issues a check for any fee required by administrative regulation on an invalid account or an account that does not have sufficient funds;
- (i) The EMS-TEI fails to file reports required by this administrative regulation; or
- (j) The EMS-TEI fails to meet the requirements of the "EMS-TEI Affidavit".

(3) A recommendation to take disciplinary action against an EMS-TEI shall be considered in executive session of the Board and shall include the opportunity for the Chief Administrative Officer or designee to be present and make a presentation on behalf of

the EMS-TEI.

(4) After consideration of information presented during the executive session, the Board may take any of the following actions:

- (a) Take no action;
 - (b) Restrict the certificate of the EMS-TEI;
 - (c) Establish a probationary period for the certificate of the EMS-TEI;
 - (d) Suspend the certificate of the EMS-TEI; or
 - (e) Revoke the certificate of the EMS-TEI.
- (5) The KBEMS office shall notify the chief administrative officer of the EMS-TEI by certified mail of the decision to take no action, restrict, probate, suspend, or revoke the certification of the EMS-TEI.

(6) The Board may direct an EMS-TEI against whom disciplinary action has been taken to:

(a) Not begin new courses at that level of training or education during the term of the disciplinary action and to notify students who are currently enrolled in an affected program of the action of the Board;

(b) Conduct an internal evaluation of the programs offered by the EMS-TEI. If an EMS-TEI is required to conduct an internal evaluation, it shall include a review of:

- 1. The qualifications, responsibilities, and performance of the program coordinator, medical director, and course faculty;
- 2. Student admission practices;
- 3. Syllabi and objectives of all courses offered;
- 4. Graduation requirements for all courses offered by the EMS-TEI;

5. Faculty involvement in program and course planning, serving as a liaison for clinical and field internship sites and classroom participation;

6. Clinical or field rotation requirements and activities;

7. Quality and adequacy of clinical or field rotation opportunities;

8. Textbooks, equipment, supplies and ancillary learning aids used by the EMS-TEI; and

9. The ability of the EMS-TEI to meet the stated goals and objectives of the program; and

(c) Require an EMS-TEI to provide a written report to the Executive Director of KBEMS that shall include a list of problems identified during the review process conducted pursuant to this section and a detailed corrective action plan, including a time frame for the completion of the plan.

(7) If a corrective action plan is required, the executive director, within sixty (60) days of receipt shall review the plan and notify the chief administrative officer, by certified mail, of the planned action, which may include:

- (a) Approving the entire plan;
- (b) Approving a portion or portions of the plan;
- (c) Requiring additional or alternative corrective actions; or
- (d) Forwarding the report to the Board with or without a recommendation for action by the Board.

(8) The executive director of the Board or a designee shall monitor compliance and may conduct announced or unannounced site visits to determine if all requirements established for any level of disciplinary action are being met.

(9) The Board upon recommendation of the executive director may:

- (a) Terminate disciplinary action and reinstate an EMS-TEI; or
- (b) Take action to pursue additional disciplinary action against an EMS-TEI.

(10) Any EMS-TEI against whom the Board takes disciplinary action may file an appeal pursuant to KRS Chapter 13B.

(11) Any disciplinary action taken against an EMS-TEI may also be commensurate with their status as an EMS-TA.

Section 5. Public Notice of Negative Action. The KBEMS office shall cause to be published, in the EMS Newsletter, or similar publication of the Board, or otherwise disseminate the name of an EMS-TEI that:

- (1) Has had no action taken based on the results of an investigation conducted as a result of a complaint;
- (2) Is placed on probationary status;
- (3) Is placed on restrictive status;

- (4) Is suspended; or
- (5) Has had certification revoked.

Section 6. Reporting Requirements for EMS-TEI. (1) Approved EMS-TEIs shall submit an "EMS Course Notification Report" for all courses that lead to licensure or certification by the Board to the KBEMS office within ten (10) working days of the commencement of each course, which report shall contain:

- (a) The type of course to be offered;
- (b) The location for the course;
- (c) The tentative starting and ending dates of each course;
- (d) A nine (9) digit number and alpha indicator for each EMS course conducted, which shall be assigned in the following manner:

1. The first three (3) digits shall correspond to the EMS-TEI approval number assigned by the Board;

2. The fourth and fifth digits shall correspond to the fiscal, (July 1—June 30) academic year. For example, if a course is taught between July 1, 2000 through June 30, 2001, the academic year number assigned shall be zero one (01);

3. The sixth and seventh digits shall correspond to the sequential number of courses begun between July 1 and June 30 of each year; and

4. An alpha designator that shall follow the seventh digit shall be:

- a. FR for first responder courses;
- b. B for EMT-Basic courses;
- c. P for paramedic courses;
- d. EI for EMS Instructor courses;
- e. CE for continuing education offerings; or
- f. Z for other educational offering;

(e) The maximum number of students to be accepted into the program; and

(f) Contact information for:

1. The chief administrative officer of the EMS-TEI;

2. The medical director, if required, for the training and education program; and

3. The lead program coordinator for the training and education program.

(2) Approved EMS-TEIs shall:

(a) Within two (2) weeks following an EMS course completion date, submit to the Board a Student Testing Eligibility Form; and

(b) Submit to the Board by no later than July 31, of each year an "EMS-TEI Annual Summary Report". If courses were not taught during the last reporting period an EMS-TEI shall file an annual report with the Board stating that no courses were taught during the reporting period.

Section 7. Requirements For All Training and Education Courses. EMS training and education courses shall meet the following instructional staff requirements:

(1) The EMS-TEI shall have instructional staff who are certified by the Board as EMS instructors and are minimally certified or licensed at the level at which the course is being offered.

(2) The EMS-TEI may also utilize adjunct faculty that meet one (1) of the requirements of Section 12 of this administrative regulation.

(3) The EMS-TEI shall have additional skill instructors for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) An instructor for the first ten (10) students; and

(b) An additional instructor for each one (1) to ten (10) additional students. The additional instructor shall not be required to be certified as an EMS instructor but shall be certified by the Board minimally at the level for the course being taught.

(4) The EMS-TEI, if providing initial training programs or continuing education programs that encompass invasive skills or procedures that routinely require medical oversight, shall have a medical director who:

(a) Is employed by or under contract with the EMS-TEI to serve as the medical director of the program;

(b) Is routinely available to the EMS-TEI to provide consult regarding issues related to the training and education program;

(c) Participates in the selection of students for the training and

education program;

(d) Provides medical consultation and guidance to the course faculty; and

(e) Meets other requirements established by the Board.

Section 8. First-responder Training and Education Course Requirements. (1) Each first-responder training and education course shall utilize the United States Department of Transportation, National Highway Traffic Safety Administration, 1995 EMT-First Responder-National Standard Curriculum and the "Emergency Medical Technician First Responder Instructor Manual Initial Training Curricula - Kentucky Required Mandatory Supplemental Curricula for the Emergency Medical Technician First Responder"; and include training and education in:

(a) Acquired immune deficiency syndrome, as required by KRS 214.610 and 311A.110; and

(b) The appropriate use of:

- 1. AEDs;
- 2. Oxygen-therapy delivery devices, including bag-valve-mask;
- 3. Cervical collar and long spine Board immobilization; and
- 4. The sphygmomanometer and stethoscope for obtaining blood pressure.

(2) Each first-responder training and education program shall be a minimum of forty-seven and one-half (47 1/2) hours in duration.

Section 9. EMT Training and Education Course Requirements.

(1) Each EMT training and education course shall:

(a) Be a minimum of 119 hours in duration;

(b) Utilize the 1994 version of the United States Department of Transportation, National Highway Traffic Administration, Emergency Medical Technician Basic: National Standard Curriculum;

(c) Provide training and education in acquired immune deficiency syndrome as required by KRS 311A.110; and

(d) Utilize the "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician Basic (EMT-B)" for:

1. Initial training in the monitoring, maintaining, and discontinuing of preestablished patient intravenous infusions in prehospital, interfacility and facility to home encounters; and

2. Initial training in advanced airway management to provide assistance to those licensed to perform advanced airway procedures.

(2) Each student shall, in order to be eligible for certification in Kentucky, be required to complete a clinical or field rotation that meets the following minimum requirements:

(a) A clinical or field internship, which shall consist of at least ten (10) hours;

(b) A clinical or field internship, which shall be conducted in a hospital emergency department or a licensed ambulance service or ALS medical first-response agency;

(c) Interviews and assessments of a minimum of five (5) patients; and

(d) Record of patient history and assessment on a prehospital care report form for each of the five (5) patients required in (2)(c) of this section.

(3) The EMS-TEI Chief Administrative Officer may require the student to repeat clinical or field rotation experience, as necessary, until the EMS instructor deems the student to have achieved the goals established for the EMS education program.

(4) If, in an extreme circumstance, an EMS-TEI is unable to obtain clinical or field rotation experiences for their students, the EMS-TEI shall file with the KBEMS office a request for approval for a variance from the requirement. The written request shall include:

(a) Written evidence of a good faith effort to obtain a clinical or field rotation site, within forty (40) miles from the location of the EMT course site, by contacting at least three (3) Board-licensed ambulance services, ALS medical first response agencies; or hospital emergency departments; and

(b) A description of proposed alternatives to the clinical or field rotation.

(5) An EMT student may begin the field internship required in this section after completion of the patient assessment module of the training and education course.

Section 10. Paramedic Training and Education Programs. (1) Each paramedic training and education program shall:

(a) Utilize the 1998 version of the United States Department of Transportation, National Highway Traffic Administration, Paramedic: National Standard Curriculum, incorporated by reference in this administrative regulation requiring as a minimum, the mean number of hours for didactic, clinical laboratory, and summative field evaluation hours as recommended by the curriculum;

(b) Provide training and education in AIDS as required by KRS 311A.110, for which the printed curriculum has been reviewed, approved and assigned an approval number by the HIV and AIDS Branch of the Cabinet for Health Services unless all students are credentialed currently;

(c) Provide training and education in determination of death and preservation of evidence as required by administrative regulation;

(d) Have a medical director who conducts or supervises a minimum of three (3) oral examinations with each student;

1. One (1) during the didactic portion of the course;

2. One (1) during the clinical portion of the course; and

3. One (1) during the final 100 hours of the field summative evaluation.

(2) As a part of each paramedic program, the EMS-TEI shall provide sufficient opportunities and locations for students to complete clinical rotations that shall:

(a) Be conducted at hospitals, clinics, physician offices, or other health care facilities. The EMS-TEI shall have a written contract, affiliation agreement or memorandum of agreement with each clinical rotation site, which at a minimum, outlines the responsibilities of each entity and reporting requirements for students while involved in clinical training and education;

(b) Be supervised by faculty from the paramedic training and education program or by clinical coordinators or supervisors employed by or under contract with the EMS-TEI to monitor student activity while in the clinical setting; and

(c) Require that a specified number of the following procedures be accomplished under supervision during the clinical rotation:

1. ALS patient assessments;

2. Intubations and other airway management techniques;

3. Placement of I.V. and I.O. lines;

4. Administration of medications utilizing I.V., I.M., I.O., endotracheal, subcutaneous, inhalation, oral and rectal routes;

5. Mixing, if applicable, and administration of I.V. piggyback medications;

6. Electrocardiographic monitoring and dysrhythmia interpretation; and

7. Other procedures as may be required by the program medical director.

(3) As a part of each paramedic program, the EMS-TEI shall provide sufficient opportunities and locations for students to complete a field internship and summative field evaluation that shall be:

(a) Conducted at Class I, Class III, or Class VII locations licensed as ALS providers by the Board. An EMS-TEI may apply to the Board for consideration of other field internship or summative field evaluation sites where a portion of the field internship or summative field evaluation requirement may be obtained. The EMS-TEI shall have a written contract, affiliation agreement or memorandum of agreement with each field internship or summative field evaluation site which as a minimum, outlines the responsibilities of each entity and reporting requirements for students while involved in field internship or summative field evaluation training;

(b) Monitored by preceptors; and

(c) A minimum of seventy-five (75) ALS patient contacts.

Section 11. Continuing Education. (1) Continuing education offerings shall:

(a) Contain material relevant to the job duties and professional development of EMS personnel; and

(b) Be conducted at a level appropriate for the discipline of the participants.

(2) Continuing education offerings may consist of:

(a) Those provided by an EMS-TEI or EMS provider;

(b) National or international programs;

(c) Symposia or national or international special schools;

(d) On-line or distance education, which shall not to exceed fifty (50) percent of the total required continuing education as established by the Board; or

(e) Other education approved by the ambulance service's medical director.

(3) Organizations other than EMS-TEIs that provide emergency medical services continuing education to the general public shall complete a Board approved application.

(4) Organizations certified to provide continuing education may utilize the Kentucky "Optional Training Curriculum" for use in service-specific continuing education for its employees or other EMTs receiving such training and education. Each student shall complete training and education and competency-based evaluations for each of the following procedures prior to being authorized to perform each respective procedure:

(a) "Application of End Tidal CO2 Monitoring";

(b) "Use of an Automated Blood Glucose Analysis Device";

(c) "EMT Application of Pulse Oximetry"; and

(d) "Application of Electrocardiogram Electrodes and Monitor".

(5) An organization certified to provide continuing education that desires to conduct training and education for EMTs who were initially certified before the implementation of the Kentucky supplemental curricula established in this administrative regulation may:

(a) Use the printed documents available from the Board; or

(b) Use service-developed printed curricula documents that have been submitted to, reviewed and approved by the Board.

Section 12. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the Board:

(a) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(b) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A paramedic licensed by the Board or licensed or certified in another state;

(d) An EMSI certified in Kentucky; or

(e) An individual who:

1. Is certified by a state or federal agency to teach or perform subject matter relevant to the National Standard Curriculum for a prehospital discipline;

2. Is certified by a nationally-recognized entity to provide EMS related training and education;

3. Is a presenter at a National Symposium which has been accredited by the Continuing Education Coordinating Board for EMS; or

4. Is a presenter approved by EMS medical director or EMS-TEI as uniquely qualified by experience or education.

(2) Individuals shall not hold themselves out to be an approved continuing education instructor if they do not meet the qualifications of this section.

Section 13. Pilot Programs. (1) An EMS-TEI, Class I, Class III, or Class VII provider may apply to the KBEMS office for authorization to perform field pilot testing of specialized training and education and associated procedures not otherwise provided for in administrative regulations.

(2) An entity seeking authorization to execute a field pilot test shall submit a written request to the Board with a written description of:

(a) How the pilot program shall be implemented and monitored;

(b) The proposed training and education curriculum;

(c) A list of instructors and their qualifications;

(d) The beginning and ending dates of the field pilot testing program;

(e) How the procedure shall benefit or improve the quality of patient care; and

(f) The methods to be used to evaluate the proposed training and education and procedure.

(3) An authorized entity approved by the Board to conduct a pilot program shall agree, in writing:

(a) To submit periodic reports related to the progress of the

pilot program, as required by the Board; and

(b) To abide by the requirements established by the Board for the pilot program.

(4) An individual otherwise certified or licensed by the Board who successfully completes an approved pilot program may perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director.

(5) The Board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; or

(b) The performance of the procedure related to:

1. A specific event;

2. A disaster; or

3. A designated directive.

(6) The Board may authorize and utilize physicians, other than EMS medical directors to supervise and monitor training and education and students involved in a pilot program.

(7) The Board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The establishment of protocols that have been reviewed and approved by the state medical advisor and the Board.

Section 14. EMS Instructors. (1) An applicant for certification as a Kentucky certified EMS instructor shall be certified or licensed as a first responder, an EMT, or a paramedic. Unless certified as a first responder or EMT, an RN or EMS medical director may only be certified as a Level III EMS instructor.

(2) An individual seeking certification as an EMS instructor shall:

(a) Complete a United States Department of Transportation National Standard Curriculum for EMS instructor course or other Board-authorized methods of instruction program conducted by an entity approved by the Board;

(b) Have been certified at the level for which they are applying for a minimum of two (2) years and shall provide documentation of a minimum of two (2) years experience with:

1. An ambulance service;

2. A medical first response agency such as a fire department or rescue squad;

3. A hospital emergency department as a caregiver; an industrial emergency response team or service in an industrial first-aid station; or

4. Another environment determined by the Executive Director to have met this requirement;

(c) If teaching a first responder or EMT course, applicants shall provide documentation that they have assisted with a basic training course at the level for which they are making application during which they have made a minimum of five (5) lecture and five (5) skill presentations under the supervision of a certified instructor. The certified instructor of the basic training course shall have served as a course coordinator or lead instructor for at least three (3) separate basic training courses and shall not have been subject to disciplinary action or reprimand by the Board within the previous thirty-six (36) months;

(d) Provide evidence of completion of a Board sponsored curriculum orientation program for the appropriate level of certification;

(e) Submit a completed "Application for EMS Instructor Initial Certification";

(f) Not be an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(g) Not have been disciplined or ever subject to discipline pursuant to KRS Chapter 311A that would prevent current certification, or have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States; and

(h) Pay any fees required by 202 KAR 7:030.

(3) The expiration date of an EMS instructor shall be the same as those of other certificates or licenses issued by the Board.

(4) EMS instructors shall be certified as:

(a) Level I, which qualifies the individual to teach first responder courses or continuing education;

(b) Level II, which certifies the individual to teach EMT and first responder courses or continuing education; or

(c) Level III, which certifies the individual to teach paramedic courses or continuing education.

(5) No individual shall be certified as an EMS instructor at a level greater than the level at which they are certified or licensed.

Section 15. Renewal of EMS Instructor Certification. (1) A person certified by the Board as an EMS instructor shall be eligible to renew the EMS instructor certification if the person:

(a) Maintains state certification or licensure as a provider, which as a minimum is at the level at which they are certified to instruct;

(b) Presents written evidence of completion of current HIV/AIDS training and education required by KRS 311A.110;

(c) During the preceding two (2) years, obtains a minimum of fifty-two (52) contact hours, providing documented evidence of completion of each hour, in the following categories:

1. A minimum of four (4) contact hours on topics related to methods of instruction (MOI);

2. Conducts a minimum of twenty-four (24) hours, or one (1) hour per each full month of certification if a certificate has been in effect for less than twenty-four (24) months, of instruction on at least three (3) different topics that are within the training and education requirements and the scope of practice for a level at which they are authorized to instruct; and

3. Presents evidence of participatory involvement in a minimum of twenty-four (24) hours, or one (1) hour per each full month of certification if a certificate has been in effect for less than twenty-four (24) months, of patient care experience with an ambulance service or other organization having an EMS mission, fire department, rescue squad, mining or other industrial health setting providing emergency medical services to their employees or members of the general public in any of the following roles of participation:

a. Actual patient emergency responses;

b. Agency quality assurance activities related to EMS; or

c. Enrolled as a participant or instructor for continuing education or agency-specific in-service training and education sponsored by the agency. Any hours obtained by participation as the instructor of this in-service training and education shall be in addition to the twenty-four (24) hours of instruction referenced in this administrative regulation; or

(d) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(e) Has not been disciplined pursuant to KRS Chapter 311A that would prevent renewal certification, or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States;

(f) Pays any fee required by 202 KAR 7:030; and

(g) Submits to the Board a completed application for EMS instructor recertification that shall:

1. Be signed by the EMS instructor; and

2. Include a statement in which the EMS instructor certifies the truth of the information supplied.

(2) An application for renewal of certification as an EMS instructor shall not be considered if:

(a) The application is postmarked to the Board after the certification expiration date of the applicant; or

(b) Prior to the certification expiration date, the EMS instructor applicant has not met the recertification requirements of this administrative regulation.

(3) Upon expiration of certification as an EMS instructor, the person may not perform any authorized function restricted by KRS or KAR to a Kentucky EMS instructor.

Section 16. Transition for Currently-certified Instructors. Instructors certified on the effective date of this administrative regulation shall be transitioned as follows:

(1) First responder instructors shall be certified as Level I EMS

instructors;

(2) EMT instructors shall be certified as Level I and Level II EMS instructors; and

(3) Licensed paramedics, RNs or EMS medical directors who can provide documentation no later than December 31, 2004, from a Kentucky approved EMS-TEI of having served as a paramedic course coordinator or as an instructor for a Kentucky approved paramedic program, during the period between January 1, 1999, and December 31, 2004 during which they can document instruction in a minimum of fifty (50) classroom hours in a minimum of five (5) different subject areas which shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries shall be certified as Level III EMS instructors.

Section 17. EMS Instructor Reciprocity. A person certified in another state as an EMS instructor shall be eligible for Kentucky certification as an EMS instructor after the person meets the requirements established in this administrative regulation.

Section 18. EMS Evaluator. (1) An applicant for endorsement as an EMS evaluator shall:

(a) Be certified as a Level I, Level II or Level III EMS instructor; or

(b) Hold current unrestricted licensure in Kentucky as:

1. A registered nurse who has specific expertise for the discipline in which they are serving as an evaluator; or

2. A physician who has specific expertise for the discipline in which they are serving as an evaluator;

(c) Have completed a Board approved evaluator training program;

(d) Have a minimum of two (2) years patient care experience prior to serving as an evaluator;

(e) Submit a completed "Application for EMS Evaluator";

(f) Not be an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(g) Not have been disciplined or subject to discipline pursuant to KRS Chapter 311A that would prevent endorsement, or have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) The endorsement of an EMS evaluator shall be commensurate with the expiration date of a certificate or license issued by the Board, the KBN or KBML.

(3) EMS evaluators shall be certified as:

(a) Level I, which qualifies the individual to evaluate first responder courses;

(b) Level II, which certifies the individual to evaluate EMT and first responder courses; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, or first responder courses.

(4) An individual shall not be given an endorsement as an EMS evaluator at a level greater than the level at which the individual is certified or licensed.

Section 19. Renewal of EMS Evaluator Endorsement. (1) A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the person:

(a) Maintains state certification or licensure as a provider, which as a minimum is at the level at which they are certified to instruct. This includes certification or licensure by the Board, licensure as a RN by the KBN, or licensure as a physician by the KBML;

(b) Attends Board required update training;

(c) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(d) Has not been disciplined pursuant to KRS Chapter 311A that would prevent a renewal endorsement, or does not have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States; and

(e) Submits to the Board a completed Application for Renewal of EMS Evaluator Endorsement that shall:

1. Be signed by the EMS evaluator; and

2. Include a statement in which the EMS evaluator certifies the truth of the information supplied.

(2) An Application for Renewal of Endorsement as an EMS evaluator shall not be considered if:

(a) The application is postmarked to the Board after the endorsement expiration date of the applicant; or

(b) Prior to the endorsement expiration date, the EMS evaluator applicant has not met the recertification requirements of this administrative regulation.

(3) Upon expiration of endorsement as an EMS evaluator, the person shall not function as a Kentucky EMS evaluator.

Section 20. Instructor and Evaluator Oversight. The Board may direct and assign the KBEMS office or other qualified individuals to conduct scheduled or unscheduled visits to an EMS instructor's classroom or to an EMS evaluator's testing site to verify compliance with the instructional or evaluation quality and performance outlined in the administrative regulation. KBEMS office staff conducting any visit shall be certified or licensed at or above the level of the training or education program being visited.

Section 21. EMS-TA. (1) An entity approved by the Board or an authorized EMS-TEI may conduct skills and practical examinations for certification or licensure.

(2) An applicant shall file a completed application for certification as an EMS-TA.

(3) A previously certified EMS-TA whose certification has been revoked may be eligible for certification as an EMS-TA after one (1) year from the date of revocation.

(4) Each certified EMS-TA shall have a chief administrative officer who shall:

(a) Be responsible for the planning, administration and oversight of the EMS-TA;

(b) Assure the quality and credentials of students accepted into examination conducted by the EMS-TA;

(c) Coordinate scheduling of examination dates and the need for appropriate proctors or representatives with the KBEMS office;

(d) Assure the security of examination results and materials; and

(e) Maintain records and documents and submit reports required by the Board.

(5) A person shall not function as an examiner or proctor for certification or licensure examination if the person:

(a) Served as the chief administrative officer, program coordinator or lead instructor, or course instructor for more than ten (10) percent of the total scheduled hours of instruction for an educational program for which candidates are being tested as described in this administrative regulation;

(b) Served as a clinical or field preceptor for the individual being tested;

(c) Supervises or is supervised by the candidate;

(d) Is a family member of the candidate; or

(e) Has a conflict of interest that may potentially bias the examiner or examination representative of the practical skills portion of the certification examination toward or against the candidate.

(6) The EMS-TA shall:

(a) Prior to January 1, 2005, be responsible for securing examiners for the practical skill portion of the certification examination who shall:

1. Have current certification or licensure from the Board to perform the skills at or above the level of training and education at which the candidate being tested or is a physician or RN that has specific expertise for the discipline in which they are serving as an evaluator;

2. Have completed a Board approved evaluator orientation program prior to serving as an evaluator;

3. Meet other requirements of the NREMT; and

4. Have a minimum of two (2) years patient care experience prior to serving as an examiner.

(b) After January 1, 2005, be responsible for securing examiners for the practical skill portion of the certification examination who

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

shall be certified pursuant to Section 18 of this administrative regulation;

(c) Notify the KBEMS office at least forty-five (45) days prior to conducting a practical exam; and

(d) Verify the eligibility of a candidate applying to initially test or retest for the practical skills portion of the certification examination. Eligibility for testing or retesting shall follow the guidelines of the National Registry of Emergency Medical Technicians.

(7) A representative designated by the Board may attend practical test sites.

(8) The KBEMS office shall schedule and conduct all written examinations and may conduct practical examinations at any level certified or licensed by the Board. The Board shall be exempt from maintaining certification as an EMS-TEI or EMS-TA in order to conduct written or practical testing.

(9) The Board may require retesting of any candidate participating in an examination process if the examination site or examiners utilized are found to be noncompliant with administrative regulations.

~~Section 22. EMS-TA Certification Periods. (1) An EMS-TA certification shall be valid for a period of five (5) years, unless modified by a disciplinary action.~~

~~(2) An EMS-TA may surrender certification prior to the end of a certification period by written notification, which shall include providing the intended effective date of such surrender.~~

~~Section 23. Disciplinary Action Against an EMS-TA The Board may take disciplinary action against an EMS-TA, if:~~

~~(1) An inspection or investigation by the KBEMS office determines the EMS-TA has not met the requirements of any section of this administrative regulation;~~

~~(2) An EMS-TA is on probationary status and fails to meet requirements established by the Board;~~

~~(3) An agent of EMS-TA reproduces or reconstructs, or attempts to reproduce or reconstruct, any portion of an examination for the purpose of assisting another to cheat on the examination;~~

~~(4) An agent of EMS-TA disseminates information for purposes of reproduction or reconstruction of any portion of an examination in order to assist another to cheat on the examination;~~

~~(5) An agent of EMS-TA cheats, or assists another to cheat, on an examination;~~

~~(6) The EMS-TA or agent falsifies a record or document;~~

~~(7) The EMS-TA or agent fails to pay a fee or issues a check for any fee required by administrative regulation on an invalid account or an account that does not have sufficient funds;~~

~~(8) The EMS-TA or agent fails to file reports required by this administrative regulation; or~~

~~(9) The EMS-TA or agent fails to meet the requirements of the "EMS-TA Affidavit".~~

~~Section 24. Incorporated by Reference. (1) The following documents are incorporated by reference:~~

~~(a) The "EMS-TEI Affidavit" (June 2003);~~

~~(b) The "EMS-TEI Annual Summary Report" (June 2003);~~

~~(c) The "Application of End Tidal CO2 Monitoring" (June 2003);~~

~~(d) The "Use of an Automated Blood Glucose" (June 2003);~~

~~(e) The "Application of Pulse Oximetry" (June 2003);~~

~~(f) The "Application of Electrocardiogram Electrodes and Monitor" (June 2003);~~

~~(g) The "Application of EMS Instructor Initial Certification" (June 2003);~~

~~(h) The "Application for EMS Evaluator" (June 2003); and~~

~~(i) The "Student Eligibility Form" (June 2003).~~

~~(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 167; Am. 935; 1233; 1495; eff. 11-19-2003.)]~~

This is to certify that the Acting Executive Director for the Kentucky Board of Emergency Medical Services has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

LEWIS PREWITT, Acting Executive

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at noon

CONTACT PERSON: Pamela Duncan, Legal Counsel, Kentucky Board of Emergency Medical Services, KCTCS, 300 North Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As amended at ARRS, October 9, 2012)

301 KAR 2:030. Commercial guide license.

RELATES TO: KRS 150.170, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(11), 150.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide's license which allows the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to promulgate administrative regulations requiring a commercial guide applicant to present proof of qualifications as established by the department. This administrative regulation establishes the requirements for obtaining and using a commercial guide's license.

Section 1. Definitions. (1) "Commercial guide's license" means a license issued by the department that allows a person to provide services for remuneration, in directing, instructing, aiding, or leading others in the taking of fish or wildlife in the field or on the water.

(2) "Direct supervision" means supervision in an approximate vicinity sufficient to provide immediate medical assistance.

(3) "Guide helper" means a person who does not possess a commercial guide's license, but is directly supervised by a commercial guide during the taking of fish and wildlife.

Section 2. Commercial Guide [and Guide Helper] Requirements. (1) A person shall not be a commercial guide in Kentucky without first obtaining a commercial guide's license from the department.

(2) A commercial guide applicant shall:

(a) Complete in entirety and submit to the department a Commercial Guide License Application on a form provided by the department;

(b) Be at least eighteen (18) years old;

(c) If applying to guide others for fishing, possess:

1. The applicable Kentucky fishing license;

2. A Kentucky trout permit if applicable; and

3. Proof of completion of a boater education course;

(d) If applying to guide others for hunting, possess:

1. A Kentucky hunting license, if applicable;

2. Any applicable Kentucky hunting permit or tag;

3.a. Proof of completion of a hunter education course; or

b.[4.] A valid hunter education exemption permit; and

4.[5.] Proof of completion of a boater education course if guiding hunters by boat;

(e) Not have been convicted of a Class A Misdemeanor in the last three (3) years;

(f) Not have been convicted of a state or federal fish and wildlife violation in the last three (3) years;

(g) Not have been convicted of a state or federal felony;

(h) Not be registered as a sex offender in any state's sex offender registry;

(i) Provide results of a current National Crime Information Center background check through the Kentucky State Police; and

(j) Provide proof of certification in:

1. Cardiopulmonary resuscitation (CPR); and

2. First aid.

(3) A commercial guide applicant who possesses a valid U.S.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

Coast Guard Captain's license may submit a copy of this license in lieu of proof of:

- (a) Completion of a boater education course;
- (b) Certification in CPR; and
- (c) Certification in first aid.

Section 3. Commercial Guide Helper Requirements. (1) A commercial guide may use a commercial guide helper if the guide helper is under the direct supervision of the commercial guide.

(2) Direct supervision of the guide helper shall not be required while on lands owned or leased by the commercial guide.
(4) A commercial guide may use a guide helper if the guide helper is under the direct supervision of the commercial guide, except direct supervision is not required on lands owned or leased by the guide.

(3) [(5)] A fishing guide helper shall:

- (a) Possess an applicable Kentucky fishing license;
- (b) Possess a Kentucky trout permit if applicable; and
- (c) Be accompanied in the boat by a licensed commercial guide.

(4) [(6)] Unless exempted by KRS 150.170, a hunting guide helper shall possess:

- (a) An applicable Kentucky hunting license;
- (b) Any applicable Kentucky hunting permit or tag;
- (c) 1. Proof of completion of a hunter education course; or
- 2. [(d)] A valid hunter education exemption permit; and**

(d) [(e)] Proof of completion of a boater education course if guiding hunters by boat.

(5) [(7)] A commercial guide helper who is working with-out/works beyond the direct supervision of a commercial guide shall possess proof of certification in:

- (a) CPR; and
- (b) First aid.

Section 4. General Requirements. (1) [(8)] A commercial guide or guide helper shall not participate in the taking of fish or wildlife beyond the applicable daily statewide bag and creel limits for a person being guided, except that a commercial guide or guide helper may take a personal daily bag or creel limit of fish or wildlife while guiding.

(2) [(9)] A commercial guide or commercial guide helper who is required to have CPR and first aid certification shall keep all certifications valid and up to date if the commercial guide is currently permitted by the department.

Section 5 [(3)]. Permit Denial and Revocation. (1) The department shall revoke a commercial guide's license of a person who is convicted of a:

- (a) State or federal fish and wildlife violation **[shall have the permit revoked]** for a period of three (3) years;
- (b) Class A Misdemeanor for a period of three (3) years;
- (c) State or federal felony in perpetuity; and
- (d) A sex offense that results in the person being required to be listed in a state's sex offender registry in perpetuity.

(2) An individual whose commercial guide's license has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 6 [(4)]. Incorporation by Reference. (1) "Commercial Guide License Application", 2012 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [KRS 150.170, 150.175, 150.412 STATUTORY AUTHORITY: KRS 150.015, 150.025, 150.190 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 authorizes the department to protect and conserve the wildlife of the Commonwealth. KRS 150.025 authorizes the department to promulgate administrative regulations to protect fish and game from overharvest. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide. EO 2008-516, effective

June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to establish the requirements for a commercial guide license and a guide helper.

Section 1. Definitions. (1) "Commercial guide" means a person who advertises or offers their services for remuneration to direct, instruct (excluding seminars), or aid others in taking wildlife.

(2) "Creel limit" is defined in 301 KAR 1:201.

(3) "Direct supervision" means supervision in the approximate vicinity sufficient to provide immediate medical assistance.

(4) "Guide helper" means a person without a commercial guide license who is supervised by a commercial guide while involved in the taking of wildlife.

(5) "Take" is defined in KRS 150.010(37).

(6) "Wildlife" is defined in KRS 150.010(41).

Section 2. Commercial Guide License Requirements and Application. (1) A person wanting to commercially guide for wildlife shall possess a commercial guide license provided by the department.

(2) A commercial guide license is valid for one (1) calendar year.

(3) An applicant of a commercial guide license shall:

- (a) Be eighteen (18) years of age or older;
- (b) Have not been convicted of any fish or game violations during the previous three (3) years;
- (c) Possess all necessary fishing licenses and permits in order to receive a commercial guide license for fishing; and
- (d) Possess all necessary hunting licenses and permits in order to receive a commercial guide license for hunting.

(4) An applicant wanting to apply for a commercial guide license shall submit to the department:

(a) An application for a commercial guide license to the Director's Office, Division of Law Enforcement, #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(b) A signed affidavit from two (2) separate character references documenting the applicant is experienced in the field in which they are guiding and that the applicant is of good moral character and in good physical condition;

(c) Proof of a National Crime Information Center (NCIC/LINK) background check through the Kentucky State Police;

(d) Effective January 1, 2010, proof of certification in cardiopulmonary resuscitation (CPR) and first aid. Certifications shall be maintained as specified by the certifying organization;

(e) Proof of completion of a boater education course when applying for a commercial guide license for fishing. An applicant may complete the online boater education course available by accessing the department's Web site at <http://fw.ky.gov> to satisfy this requirement; and

(f) Proof of completion of a hunter education course, or a valid hunter education exemption permit available by accessing the department's Web site at <http://fw.ky.gov>, when applying for a commercial guide license for hunting. A commercial guide applicant who guides hunters by boat shall also submit proof of completion of a boater education course or the online boater education course.

(5) A commercial guide who has possessed a commercial guide license for the past three (3) consecutive years shall not be required to submit the two (2) character reference affidavits, as established in this Section of this administrative regulation, when applying for a commercial guide license.

(6) A commercial guide applicant who possesses a valid United States Coast Guard Captain's License ("six pack") and will guide on a United States Coast Guard regulated waterway may submit a copy of this license in lieu of the boater education course requirements, as established in this section when applying for a commercial guide license. Effective January 1, 2010, a commercial guide applicant who possesses a valid U.S. Coast Guard Captain's License (six pack) and will guide on a U.S. Coast Guard regulated waterway may submit a copy of this license in lieu of the CPR and first aid requirements, as established in this section, when applying for a commercial guide license.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

~~Section 3. Guide Helper. (1) A commercial guide may utilize guide helpers provided they are under the direct supervision of the commercial guide, except on lands owned or leased by the commercial guide.~~

~~(2) A fishing guide helper shall:~~

~~(a) Have in possession all necessary fishing licenses and permits; and~~

~~(b) Be accompanied in the boat by a commercial guide;~~

~~(3) A hunting guide helper shall have in possession:~~

~~(a) All necessary hunting licenses and permits;~~

~~(b) 1. A hunter education card; or~~

~~2. A valid hunter education exemption permit; and~~

~~(c) A boater education card if helping a commercial guide by boat.~~

~~(4) Effective January 1, 2010, a guide helper wishing to work beyond the direct supervision of the commercial guide shall be required to have cardiopulmonary resuscitation (CPR) and first aid certification. Certifications shall be maintained as specified by the certifying organization.~~

~~Section 4. Commercial Guide License Prohibitions and Revocation. (1) A commercial guide or guide helper shall not participate in the taking of fish or game beyond the bag limit or creel limit of the person or persons being guided except that a commercial guide or guide helper may take their daily bag or creel limit of fish or game while guiding.~~

~~(2) The department shall revoke and not renew the commercial guide license, for a period of three (3) years, of a person convicted of any state or federal fish or game violation.~~

~~(3) An individual whose commercial guide license has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.~~

~~Section 5. Incorporation by Reference. (1) "Commercial Guide License Application", 07/18/08, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 14, 2012 at 3 p.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As amended at ARRS, October 9, 2012)

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

RELATES TO: KRS 150.010, 150.240, 150.620, 150.640, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.240(2), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.240(2) authorizes the department to promulgate administrative regulations to establish permits for public or commercial shooting areas. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of

these areas, and to charge fair and reasonable fees to the public for use of these areas. This administrative regulation establishes requirements for the use of the Otter Creek Outdoor Recreation Area.

Section 1. Definitions. (1) "Camp Piomingo" means a designated area within Otter Creek Outdoor Recreation Area that is leased from the department for an outdoor summer camp.

(2) "Event" means a planned gathering of thirty (30) or more people twelve (12) years or older on the area at the same time.

(3) [(2)] "Shooting range" means a department built:

(a) Firearm target range facility in which a person is required to shoot through a metal tube at various stationary targets; or

(b) Archery range facility in which a person shoots at stationary targets from specified locations.

Section 2. General Area Use Restrictions. (1) A person, except for permit exempt individuals, shall possess and carry:

(a) A valid daily or annual Area Entry Permit when using the Otter Creek Outdoor Recreation Area; and

(b) A valid daily or annual Special Activities Permit if:

1. Biking on designated trails;

2. Horseback riding on designated trails; or

3. Using designated shooting range facilities.

(2) The department ~~may~~ **shall** enter into a lease agreement with Camp Piomingo to establish an annual flat-rate fee which allows permit-exempt use of the area by Camp Piomingo:

(a) Campers; and

(b) Staff.

(3) A person shall not be on the area when the area is closed, except for:

(a) Registered campers at the designated campground area;

(b) Authorized hunters; or

(c) A special activity or event authorized by the department.

(4) [(3)] The department shall notify the public when the area is closed by:

(a) A pre-recorded phone message;

(b) An internet posting; and

(c) Visible signage on the area.

(5) [(4)] A person shall park vehicles in designated parking areas only.

(6) [(5)] A person who is hunting, fishing, trapping, or boating on the area shall follow all applicable administrative regulation requirements pursuant to 301 KAR Chapters 1, 2, 3, and 6;

(7) [(6)] The area shall be closed to the general public, except for authorized hunters, during:

(a) A firearms deer quota hunt pursuant to 301 KAR 2:178; and

(b) Spring turkey season, pursuant to 301 KAR 2:142.

(8) [(7)] The following activities are prohibited without prior department authorization:

(a) Cutting or removing live or standing trees, shrubs, or other vegetation;

(b) Riding motorized all-terrain or off-highway vehicles;

(c) Allowing unleashed dogs, except at times and areas designated by the department;

(d) Camping, except in designated areas;

(e) Setting fires, except for attended fires:

1. In designated camping areas; or

2. In grills at designated picnic areas.

(f) Blocking a roadway or gate;

(g) Igniting fireworks or rockets;

(h) Participating in a commercial activity or endeavor;

(i) Damaging or destroying crops or wildlife food plots;

(j) Damaging or defacing buildings, structures, signs, or other property;

(k) Hunting in an area closed to hunting;

(l) Tethering a horse to a tree, shrub or sign; or

(m) Discharging a firearm:

1. Within 100 yards of a building;

2. Except on a designated firearm shooting range; or

3. Except during an authorized hunting season in an authorized hunting area.

Section 3. Trail Requirements. (1) A person shall only ride a

horse or bike on designated trails or roadways.

(2) A person shall not possess a wheeled vehicle other than a bike on a designated bike trail, except for department authorized maintenance activities.

(3) A person shall not ride a bike or a horse on designated trails that have been temporarily closed by the department due to:

- (a) Hunting activity;
- (b) Wet conditions;
- (c) Trail maintenance activity;
- (d) Downed trees;
- (e) Unsafe conditions; or
- (f) An event authorized by the department.

(4) The department shall provide the public with a reasonable notification system for temporary trail closures that includes:

- (a) A pre-recorded phone message;
- (b) An internet posting; and
- (c) Visible signage on the area.

Section 4. Event Permits. (1) A group of people conducting an event shall not meet on the area without first applying for and obtaining a completed Event Permit from the department.

(2) A person, on behalf of the people involved with an event, shall apply for an Event Permit at least thirty (30) days in advance of the planned event.

(3) The application for an Event Permit shall be on a form provided by the department.

(4) The department shall deny an Event Permit if the planned activity or event:

- (a) Is prohibited pursuant to this administrative regulation; or
- (b) Is in conflict with:

1. Another Event Permit activity already authorized by the department;

- 2. A hunting season;
- 3. A quota hunt; or
- 4. Recreational use of the area.

Section 5. Incorporation by Reference. (1) "Otter Creek Event Permit Application", 2011 Edition, is incorporated by reference.

(2) The permit application may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 14, 2012 at 3 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

GENERAL GOVERNMENT CABINET

Department of Agriculture

Office of Consumer and Environmental Protection

Division of Environmental Services

(As amended at ARRS, October 9, 2012)

302 KAR 29:020. General provisions for structural pest control.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136i, 49 U.S.C. 51

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for record-keeping, the storage and handling of restricted-use pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.

(1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides:

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. All commercial and noncommercial structural applicators who apply pesticides or any termiticides shall maintain the following records:

- (a) Name and address of person receiving services and location of performance of services;
- (b) Brand or product name of pesticides applied;
- (c) Date of application;
- (d) Type of area treated;
- (e) Name of applicator; and
- (f) Total amount of each pesticide applied, excluding paste baits.

(3) Retention. All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one or more persons may have used or applied pesticides.

(4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply[applies] to all persons holding a Category 7(a), Category 7(b), Category 7(c), Category 8, or Category 12 license who have occasion to store pesticides.

(2) Standards for storage:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;

(b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;

(d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions; and

(e) Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison."

(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 U.S.C. 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136i[14].

Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

Section 6. Registered Pesticide Equipment Identification. (1) Each branch or pesticide applicator shall at all times have its vehicles, which are actively and regularly engaged in service work, marked for easy identification. The identification shall consist of the letters "L.P.C.O." two (2) inches high and followed by the company number of the business, as assigned by the department. The identification shall be placed in a highly visible location.

(2) The vehicle owner shall notify the department if a vehicle registered under KRS 217B.565 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall remove[be responsible for removing] the identification if the vehicle is permanently removed from active pesticide application or is permanently transferred out of the state.~~[Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.]~~

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(As amended at ARRS, October 9, 2012)

302 KAR 29:060. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to estab-

lish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. **Except as provided by Section 7 of this administrative regulation, the certifications established in this administrative regulation[Unless otherwise specified, the certifications provided for in this chapter]** shall be valid for three (3) years and **shall[must]** be renewed and maintained in accordance with Section 7 of this administrative regulation.

Section 2. Types of Certification. (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover all persons using or supervising the use of pesticides **only** for structural pests **[only,]** in, on, or around food-handling establishments, human dwellings, educational facilities, health care centers, **and** industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; **or[and]** for the protection of stored, processed, or manufactured products. Industrial, institutional, structural, and health-related pest control certification shall be divided into the following subcategories:

(a) Structural pest control certification shall cover the use of pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation. Persons certified under this section shall be exempt from the certification requirements of 302 KAR Chapters 27 and 28 if using or supervising the use of pesticides for the control of structural-invading pests in areas adjacent to or outside any structure being treated by the person pursuant to **[the provisions of]** 302 KAR Chapter 29.**[.]**

(b) Integrated pest management certification shall cover an environmentally-sound approach to pest management in schools and health care facilities with the goal of the judicious use of pesticides; **and[.]**

(c) Structural fumigation certification shall cover the use of pesticides in the form of poisonous gases.

(2) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of pesticides in management and control of pests in public health programs.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in this administrative regulation. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation and the specific standards of competency in Section 5 of this administrative regulation for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed "Structural Pest Control License Form" specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

- (1) Label and labeling comprehension:
 - (a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;
 - (b) Classification of the product, general or restricted; and
 - (c) Necessity for use consistent with the labeling;~~;~~
- (2) Safety factors, including:
 - (a) Pesticide toxicity, hazard to humans, and common exposure routes;
 - (b) Common types and causes of pesticide accidents;
 - (c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
 - (d) Symptoms of pesticide poisoning;
 - (e) First aid and other procedures to be followed if a pesticide accident occurs;
 - (f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and
 - (g) The proper selection and use of personal protective equipment for the handling and application of pesticides;
- (3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:
 - (a) Weather and other climatic conditions;
 - (b) Types of terrain, soil, or other substrata;
 - (c) Presence of fish, wildlife, and other nontarget organisms; and
 - (d) Drainage patterns;
- (4) Pest identification, including consideration of the following factors:
 - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
 - (b) Pest maturation and development as it may relate to the problem of identification and control;~~;~~
- (5) Pesticides, including consideration of the following factors:
 - (a) Types of pesticides;
 - (b) Types of pesticide formulations;
 - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;
 - (d) Hazards and residues associated with use;
 - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - (f) Dilution procedures;~~;~~
- (6) Equipment, including consideration of the following factors:
 - (a) Types of pesticide application equipment and advantages and limitations of each; and
 - (b) Uses, maintenance, and calibration of equipment;~~;~~
- (7) Application techniques; factors including:
 - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
 - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - (c) Prevention of drift and pesticide loss into the environment;~~;~~
~~and~~;
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal **Insecticide, Fungicide, and Rodenticide** [Environmental Pesticides Control] Act, 7 U.S.C. 136-~~136v~~, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

- (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:
 - (a) Structural pest control. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum stan-

dards of application, and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition. **Because structural pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.**~~[Because school and health-related pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.]~~

- (b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of ~~at this~~ 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.

- (c) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by **302 KAR Chapter 29**~~[these administrative regulations]~~ and by good operating practice. For those persons holding both a category 7(a) and 7(c) certification, the expiration and renewal dates of the 7(c) certification shall be the same as the corresponding 7(a) certification regardless of its original issue date.

- (2) Category 8. Public health. Each person with certification in category 8 in effect on **September 8, 2010**~~[the effective date of this administrative regulation]~~ shall be granted certification in category 7(a) and category 7(b) with a expiration date of December 31, 2012.

- (3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

Section 6. License Examination. Structural. The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

Section 7. Certification Maintenance. To maintain a category 7(a), or category 12 certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training, approved by the department, in the use and application of pesticides. To maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to maintain a category 7(c) certification, each person certified in this category shall in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(c) certification, an additional three (3) category specific continuing education units shall be required. All certifications in effect on the effective date of this administrative regulation shall be renewed

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

with an expiration date of December 31, ~~2015~~[2012]. Credit shall be given in full continuing education unit increments only. ~~[All persons holding certification in any category shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation.]~~

Section 8. Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall ~~[be required to]~~ maintain certification and pay the annual renewal fee required by KRS 217B.535. The licensee shall not ~~[be permitted to]~~ perform any type of regulated activity until the license is reactivated.

(b) Employee commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form", October 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, October 9, 2012)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 48.010(15)(a), 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, 50 Appendices A-R, 51.100, 51.121, 51.165, 51.166, 51 Appendix S, 52.920, 53, 60, 60

Appendices A, B, 61, 61 Appendix B, 63 Appendices A-D, 70.2, 75, 82, 96, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are ~~not~~[neither] more stringent[~~nor otherwise different~~] than the corresponding federal definitions.

Section 1. Definitions. The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, as published on July 1, 2012[~~effective July 1, 2010~~].

(1) "Acid rain emissions limitation" means a limitation on emissions of SO₂ or NO_x imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions":

(a) Means the actual rate of emissions of a regulated NSR pollutant from an emissions unit as determined according to the following:

1. Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation, unless a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions;

(b) Means source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166;

(c) Means, for an emissions unit that has not begun normal operations on a particular date, the potential to emit of the unit on that date; and

(d) Does not mean:

1. Calculating if a significant emissions increase has occurred;

or

2. Establishing a PAL under 401 KAR 51:017, Section 20.

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" is defined by 40 C.F.R. 51.301.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined by KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) "Allocate" or "allocation" means the number of NO_x allowances to be credited to a NO_x budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1. through 3. of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant, to which a standard applies, not previously emitted.

(14) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project, unless a different twenty-four (24) month time period is more representative of normal source operation.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b. of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period allowed for each regulated NSR pollutant;

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 51:052.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward:

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to

comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b. of this subparagraph.

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used for each regulated NSR pollutant to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period;

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit; or

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area and every part of that area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ annual average of the pollutant for which the minor source baseline date is established for SO₂, NO₂, or PM₁₀ or equal to or greater than 0.3 $\mu\text{g}/\text{m}^3$ annual average for PM_{2.5}.

(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) do not intersect and are not smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM₁₀ increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures; and

(b) For a change in method of operations, those on-site activities, other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollu-

tant that will be emitted from a proposed major stationary source or major modification and:

(a) Is determined by the cabinet pursuant to 401 KAR 51:017, Section 8, after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines pursuant to 40 C.F.R. 51.166(b)(12) that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping or have the same two (2) digit major group code as described in the Standard Industrial Classification Manual;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "°C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined by 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH₄" means methane.

(36) "Clean coal technology" is defined by 40 C.F.R. 51.166(b)(33).

(37) "Clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(34).

(38) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39) "CO" means carbon monoxide.

(40) "CO₂" means carbon dioxide.

(41) "COD" means chemical oxidant demand.

(42) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(43) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(44) "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(45) "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(46) "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(47) "Complete" is defined by 40 C.F.R. 51.166(b)(22).

(48) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49) "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50) "Construction" means:

(a) Fabrication, erection, installation, or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in the emissions at an air contaminant source.

(51) "Continuous emissions monitoring system" or "CEMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 or 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52) "Continuous emission monitoring system for NOx" or "CEMS for NOx" means the equipment required to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emissions monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O₂ or CO₂);

(d) Continuous moisture monitor; and

(e) Automated data acquisition and handling system.

(53) "Continuous emissions rate monitoring system" or "CERMS" is defined by 40 C.F.R. 51.166(b)(46).

(54) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if appli-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

cable), to analyze, and to provide a permanent record of emissions or process parameters.

(55) "Continuous parameter monitoring system" or "CPMS" is defined by:

(a) 40 C.F.R. 51.166(b)(45) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(xxxiii) for 401 KAR 51:052.

(56) "Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(57) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.

(58) "District" is defined by KRS 224.01-010(11).

(59) "dscf" means dry cubic feet at standard conditions.

(60) "dscm" means dry cubic meter at standard conditions.

(61) "Electric generating unit" means, for 401 KAR 51:160 to 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62) "Electric utility steam generating unit" or "EUSGU" is defined by 40 C.F.R. 51.166(b)(30).

(63) "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64) "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(65) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source shall use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67) "Excess NO_x emissions" means any tonnage of nitrogen oxides emitted by a NO_x budget unit during a control period that exceeds the NO_x budget emissions limitation for the unit.

(68) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69) "Existing source" means a source that is not a new source.

(70) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the national ambient air quality standard for ozone.

(71) "°F" means degree Fahrenheit.

(72) "Federal land manager" is defined by 40 C.F.R. 51.166(b)(24).

(73) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky State Implementation Plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under the Kentucky SIP approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under a U.S. EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

(74) "Federally enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.

(75) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76) "Fossil fuel" means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77) "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78) "ft" means feet or foot.

(79) "Fuel" means natural gas; petroleum; coal; wood; or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81) "g" means gram.

(82) "gal" means gallon.

(83) "General fund" is defined by KRS 48.010(15)(a).

(84) "Generator" means a device that produces electricity.

(85) "gr" means grain.

(86) "HCl" means hydrochloric acid.

(87) "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet.

(88) "HF" means hydrogen fluoride.

(89) "Hg" means mercury.

(90) "High terrain" is defined by 40 C.F.R. 51.166(b)(25).

(91) "hr" means hour.

(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93) "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94) "H₂O" means water.

(95) "H₂S" means hydrogen sulfide.

(96) "H₂SO₄" means sulfuric acid.

(97) "in" means inch.

(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100) "Innovative control technology" is defined by 40 C.F.R. 51.166(b)(19).

(101) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102) "J" means joule.

(103) "Kg" means kilogram.

(104) "l" means liter.

(105) "lb" means pound.

(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109) "Low terrain" means an area other than high terrain.

(110) "Lowest achievable emissions rate" or "LAER" means, for any source:

(a)1. The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

2. The most stringent emissions limitation achieved in practice by the class or category of stationary source;

(b) For a major modification, the lowest achievable emissions rate for the new or modified emissions units at the stationary source; and

(c) An emissions limitation that does not exceed the allowable emissions of an applicable standard established pursuant to 40 C.F.R. Parts 60, 61, or 63.

(111) "m" means meter.

(112) "m³" means cubic meter.

(113) "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401 - 7671q for nonattainment areas.

(114) "Major modification" means a physical change in or a change in the method of operation of a major stationary source that results in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052; unless the change would be prohibited by a federally enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use by a permit issued pursuant to 401 KAR 51:017 or 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited by any federally enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or pursuant to 401 KAR 52:020 and 51:016E;

6. A change in ownership at a stationary source;

7. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

9. The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) Instead of this definition, the definition for "PAL major modification", in subsection (175) of this section, is used for a particular regulated NSR pollutant, if the major stationary source is complying with the requirements of 401 KAR 51:017, Section 20, and 401 KAR 51:052, Section 11, for a PAL for that pollutant.

(115) "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116) "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117) "Major source baseline date" means:

(a) For PM₁₀[particulate matter] and sulfur dioxide, January 6, 1975; [and]

(b) For nitrogen dioxide, February 8, 1988; and

(c) For PM_{2.5}, October 20, 2010.

(118) "Major stationary source" means:

(a)1. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that:

a. For ozone nonattainment areas: 100 tons per year or more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;

b. Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and

c. Seventy (70) tons per year or more of particulate matter (PM₁₀) in a serious PM₁₀ nonattainment area; or

2.a. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and

b. Regardless of the stationary source size specified in clause a.[subclause (i)] of this subparagraph[clause], a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself;

(b) A source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone; and

(c) Fugitive emissions are included only if the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 9. Hydrofluoric, sulfuric, or nitric acid plants;
 10. Petroleum refineries;
 11. Lime plants;
 12. Phosphate rock processing plants;
 13. Coke oven batteries;
 14. Sulfur recovery plants;
 15. Carbon black plants (furnace process);
 16. Primary lead smelters;
 17. Fuel conversion plants;
 18. Sintering plants;
 19. Secondary metal production plants;
 20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
 21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
 22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 23. Taconite ore processing plants;
 24. Glass fiber processing plants;
 25. Charcoal production plants;
 26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
 27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.
- (119) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable.
- (120) "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the U.S. Department of Interior, has determined visibility to be an important value.
- (121) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the national ambient air quality standard for ozone.
- (122) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.
- (123) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if a unit lacks certified monitors to report heat input and is:
- (a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D, to report heat input; or
 - (b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO₂ concentration (in percent CO₂) or the minimum percent O₂, if the unit intends to use a flow monitor and a diluents gas monitor.
- (124) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O₂ or the minimum percent CO₂ under all operating conditions of the unit except for unit start-up, shutdown, and malfunction.
- (125) "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.
- (126) "µg" means microgram.
- (127) "mg" means milligram.
- (128) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:
- (a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129) "min" means minute.

(130) "Minor source baseline date" means:

(a) The earliest date after the trigger date on which a major stationary source or a major modification subject to permit requirements established pursuant to 40 C.F.R. 52.21 or the Kentucky SIP submits a complete application. The trigger date is:

1. [For particulate matter and sulfur dioxide, the trigger date is] August 7, 1977, for PM₁₀ and SO₂;

2. [; and 2. For nitrogen dioxide, the trigger date is] February 8, 1988, for NO₂; and

3. October 20, 2011, for PM_{2.5};

(b) For TSP increments, that the originally established date remains in effect to determine the amount of available PM₁₀ increments, unless the cabinet rescinds the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv); and

(c) A date established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131) "MJ" means megajoules.

(132) "mm" means millimeter.

(133) "MM" means million.

(134) "mo" means month.

(135) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the national ambient air quality standard for ozone.

(136) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specification as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137) "Monitoring device" means the total equipment, required by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.

(138) "Monitoring system" means a monitoring system that meets the requirements of any applicable administrative regulation in 401 KAR Chapters 50 to 65.

(139) "MWe" means megawatt electrical.

(140) "N₂" means nitrogen.

(141) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other derat-

ings as measured with United States Department of Energy standards.

(142) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R. 52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401 - 7671q.

(144) "Net emissions increase" means:

(a) For any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4), or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph are determined as defined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 51:052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM₁₀ emissions are used to evaluate the net emissions increase for PM₁₀.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified in the Kentucky SIP.

(147) "ng" means nanograms.

(148) "NO" means nitric oxide.

(149) "NO₂" means nitrogen dioxide.

(150) "Nonattainment major new source review program" or "NSR program" is defined by 40 C.F.R. 51.165(a)(1)(xxx). For purposes of this definition, "administrator" means the U.S. EPA.

(151) "NO_x" means nitrogen oxides.

(152) "NO_x allowance" is defined by 40 C.F.R. 96.2.

(153) "NO_x Allowance Tracking System" or "NATS" is defined by 40 C.F.R. 96.2. For purposes of this definition, "administrator" means the U.S. EPA.

(154) "NO_x authorized account representative" is defined by 40 C.F.R. 96.2.

(155) "NO_x budget emissions limitation" means, for a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NO_x allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NO_x emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NO_x budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NO_x budget opt-in source under 40 C.F.R. 96.87.

(156) "NO_x budget opt-in source" means an affected facility that has elected to become a NO_x budget unit under the NO_x Budget Trading Program and whose NO_x budget opt-in permit has been issued and is in effect.

(157) "NO_x budget source" is defined by 40 C.F.R. 96.2.

(158) "NO_x Budget Trading Program" is defined by 40 C.F.R. 96.2.

(159) "NO_x budget unit" means a unit that is subject to the NO_x Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160) "NO_x budget unit operator" means a person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or a unit for which an application for a NO_x budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NO_x budget unit or source.

(161) "NO_x budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and unless expressly provided for in a leasehold agreement, does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership.

(162) "O₂" means oxygen.

(163) "O₃" means ozone.

(164) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165) "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166) "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167) "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168) "Owner", for a NOx budget unit, is defined by 40 C.F.R. 96.2.

(169) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part.

(170) "oz" means ounce.

(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane (CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero-tenths (1.0).

(172) "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173) "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175) "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178) "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or solid measured by a U.S. EPA-approved test method or a test method approved in the Kentucky SIP.

(179) "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(180) "Peak load" means the maximum instantaneous operating load.

(181) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182) "Person" is defined by KRS 224.01-010(17).

(183) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 51:052.

(184) "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as

measured by a reference method in 40 C.F.R. Part 50, Appendix J, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(187) "Pollution prevention" is defined by 40 C.F.R. 51.166(b)(38).

(188) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcite and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401 - 7671q, or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actual PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(191) "ppb" means parts per billion.

(192) "ppm" means parts per million.

(193) "ppm(w/w)" means parts per million (weight by weight).

(194) "Precalciner kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195) "Predictive emissions monitoring system" or "PEMS" is defined by 40 C.F.R. 51.166(b)(44).

(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198) "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199) "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source; or

(b) The maximum annual rate, in tons per year, at which an emissions unit, before beginning actual construction, is projected to emit a regulated NSR pollutant, if the source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity, filings with the cabinet and the U.S. EPA, and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1. of this paragraph to determine projected actual emissions.

(200) "psia" means pounds per square inch absolute.

(201) "psig" means pounds per square inch gage.

(202) "RACT/BACT/LAER Clearinghouse" or "RBL" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) "Reactivation of a very clean coal-fired EUSGU" is defined by 40 C.F.R. 51.166(b)(37).

(204) "Reasonable further progress" is defined by 42 U.S.C. 7501(1). For purposes of this definition, "administrator" means the U.S. EPA.

(205) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207) "Regulated NSR pollutant" means **[the following]**:

(a) **For 401 KAR 51:017:**

1. A pollutant for which a national ambient air quality standard has been promulgated and the following [any] constituents or precursors **to that[such] pollutant**:

a.[1.] Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

b.[2.] Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas;

c.[3.] Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas unless **the Cabinet demonstrates to the EPA administrator's satisfaction or EPA demonstrates [it is demonstrated]** that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations;

d.[4.] Volatile organic compounds are presumed not to be precursors to PM_{2.5} in **an[any]** attainment or unclassifiable area unless **the Cabinet demonstrates to the EPA administrator's satisfaction or EPA demonstrates [it is demonstrated]** that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations; and

e.[5. Particulate matter emissions.] PM_{2.5} emissions[,] and PM₁₀ emissions **[shall]** include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures [for such pollutants identified by the U.S. EPA];

(i) On or after January 1, 2011, condensable particulate matter is included in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued pursuant to 401 KAR 51:017;

(ii) Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to January 1, 2011, is not based on con-

densable particulate matter unless required by the terms and conditions of a permit; and

(iii) Applicability determinations made prior to January 1, 2011, without accounting for condensable particulate matter are not considered in violation of this section;

2.[(b)] A pollutant subject to **a[any]** standard promulgated under 42 U.S.C. 7411;

3.[(c)] A pollutant subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

4.[(d)] A pollutant that otherwise is subject to regulation, as defined in subsection (231) of this section, under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408; or

(b) For 401 KAR 51:052:

1. Nitrogen oxides or volatile organic compounds; or

2. A pollutant for which a national ambient air quality standard has been promulgated and the following constituents or precursors to that[such] pollutant:

a. Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

b. Sulfur dioxide is a precursor to this PM_{2.5} in all PM_{2.5} nonattainment areas;

c. Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas unless the Cabinet demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations;

d. Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in a PM_{2.5} nonattainment area unless the Cabinet demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations; and

e. PM_{2.5} emissions and PM₁₀ emissions include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures;

(i) On or after January 1, 2011, condensable particulate matter is included in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued pursuant to 401 KAR 51:052;

(ii) Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to January 1, 2011, is not based on condensable particulate matter unless required by the terms and conditions of a permit; and

(iii) Applicability determinations made prior to January 1, 2011, without accounting for condensable particulate matter are not considered in violation of this section.

(208) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209) "Repowering" is defined by 40 C.F.R. 51.166(b)(36).

(210) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211) "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212) "S" means at standard conditions.

(213) "sec" means second.

(214) "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the national ambient air quality standard for ozone.

(216) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the national ambient air quality standard for ozone.

(217) "Shutdown" means the cessation of an operation.

(218) "Significant" means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM _{2.5}	10 tpy direct, 40 tpy of sulfur dioxide or nitrogen oxides [for precursors]*
PM ₁₀	15 tpy
Particulate matter	25 tpy [of particulate matter emissions] [15 tpy of PM ₁₀ emissions]
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy

Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 x 10 ⁻⁶ megagrams per year (Mg/y) (3.5 x 10 ⁻⁶ tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 [35] Mg/y (50 tpy)

*Nitrogen oxide emissions are evaluated unless demonstrated not to be a PM_{2.5} precursor pursuant to subsection (207)(a)1.c.(3) of this section.

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate;

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) µg/m³ over a twenty-four (24) hour average;

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM _{2.5}	10 tpy direct, 40 tpy of sulfur dioxide or nitrogen oxides [for precursors]*
PM ₁₀	15 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy

*Nitrogen oxide emissions are evaluated unless demonstrated not to be a PM_{2.5} precursor pursuant to subsection (207)(b)2.c.(a)(3) of this section.

(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:

1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or

2. An[Any] increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area; or

(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contribute significantly to carbon monoxide levels.

(219) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

equal to or greater than the applicable significant level as defined in subsection (218) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222) "SO₂" means sulfur dioxide.

(223) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224) "sq" means square.

(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227) "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg); or

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228) "Start-up" or "startup" means the setting in operation of an affected facility.

(229) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230) "Stationary source" means a building, structure, facility, or installation that emits or has the potential to emit a regulated NSR pollutant.

(231) "Subject to regulation" is defined by 40 C.F.R. 51.166(b)(48).

(232) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(233) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(234) "Temporary clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(35).

(235) "Ton" or "tonnage", for a NO_x budget source, means a short ton or 2,000 pounds. For determining compliance with the NO_x budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(236) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(237) "tpy" means tons per year.

(238) "TSS" means total suspended solids.

(239) "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(240) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(241) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.

(242) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(243) "U.S. EPA" means the United States Environmental Protection Agency.

(244) "UTM" means Universal Transverse Mercator.

(245) "Visibility impairment" is defined by 40 C.F.R. 51.301.

(246) "Volatile organic compound" or "VOC" is defined by 40 C.F.R. 51.100(s).

(247) "yd" means yard.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "North American Industry Classification System", 2007, as published by the Office of Management and Budget; and

(b) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget [~~is incorporated by reference~~].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 200 Fair Oaks Lane, 1st floor, Frankfort, Kentucky 40601-1403, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at 11 a.m.

CONTACT PERSON: Laura Lund, Environmental Technologist III, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura.Lund@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Insurance
Property and Casualty Division
(As amended at ARRS, October 9, 2012)**

806 KAR 10:060. Cancellation of financial responsibility.

RELATES TO: KRS 304.1-040, 304.2-110, 304.10-030, 304.10-040, 304.10-140

STATUTORY AUTHORITY: KRS 304.2-110, 304.10-210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.10-210 requires the commissioner to make reasonable rules and regulations consistent with KRS 304, Subtitle 10, for the effectuation of the surplus lines law. This administrative regulation establishes a time limit for insurers, corporate sureties, or other entities to notify surplus lines brokers of the cancellation of that financial responsibility.

Section 1. Definitions. (1) "Broker" is defined in KRS 304.10-030(3) [304.10-030(1)].

(2) "Insurer" is defined in KRS 304.1-040.

Section 2. Cancellation of Financial Responsibility. An insurer,

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

corporate surety, or other entity providing an errors and omissions insurance policy or a bond, as described in KRS 304.10-140(1), shall not terminate the insurance policy or bond unless it has given the broker at least thirty (30) days prior written notice of the termination.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2012

FILED WITH LRC: August 14, 2012 at 4 p.m.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As amended at ARRS, October 9, 2012)

900 KAR 6:085. Implementation[Transfers] of outstanding Certificates[Certificate] of Need ~~if[when]~~ ownership has changed.

RELATES TO: KRS 216B.010, 216B.061(1)(h), 216B.0615, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for the implementation[transfer] of outstanding[a] Certificates[certificate] of Need ~~if[when]~~ ownership has changed for an existing licensed facility ~~[for the orderly administration of the Certificate of Need Program].~~

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Outstanding" means a project has not been implemented and a license has not been issued by the Office of Inspector General.

(3) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

Section 2. Implementation[Transfers] of outstanding Certificates of Need ~~if[when]~~ ownership has changed. (1) A Certificate[Certificates] of Need issued by the cabinet to an existing ~~licensed~~ facility for purposes other than replacement of the facility may be implemented by[transferred to] the new owner of the facility if the change of ownership occurs prior to implementation of the outstanding project for which the Certificate of Need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of ~~a person who is~~ the holder of an approved Certificate of Need for the establishment of a new health facility shall not constitute the sale, trade, or transfer of a Certificate of Need ~~[need to another person]~~ for purposes of KRS 216B.061(1)(h) and 216B.0615. **[900 KAR 6:085.]**

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 5, 2012

FILED WITH LRC: July 5, 2012 at 1 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, October 9, 2012)

900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.

RELATES TO: KRS 216B.010, ~~[216B.062,]~~ 216B.085, 216B.086, 216B.090, 216B.095, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding Certificate of Need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of applications for Certificate of Need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Office or clinic" means the physical location at which health care services are provided.

(8) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(10) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer. ~~["Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.]~~

(11) "Proposed service area" means the geographic area the applicant proposes to serve.

(12) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(13) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(14) ~~["Qualified academic medical center" means:~~

~~(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;~~

~~(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or~~

~~(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraph (a) or (b) of this subsection.~~

~~(45)] "Secretary" is defined by KRS 216B.015(25).~~

~~(15)](46)] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.~~

Section 2. Filing. (1) The filing of all documents required by this

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than Certificate of Need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) Hearings on Certificate of Need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340.

(c) Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the Certificate of Need Newsletter, if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if each person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, allow a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the

parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(10) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(11) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(13) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(14) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(15) Witnesses shall be examined under oath or affirmation.

(16) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5) and filed with the hearing officer and other parties at least:

1. Seven (7) days before the hearing for formal review applications; or

2. Five (5) days before the hearing for nonsubstantive review applications.

(18) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(19) The hearing officer may take official notice of facts which are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(21) In a hearing on an application for a Certificate of Need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a Certificate of Need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a Certificate of Need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of that Certificate of Need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity alleging the violation, including the Cabinet, shall have the burden of establishing by a preponderance of evidence the alleged violations. The burden is met with evidence that the charged enti-

ty [alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity.]

(a) Has not[not] established or is not[not] operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9) ~~[(a)] If [Except as provided by paragraph (b) or (c) of this subsection, if] it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her proposed findings of fact, conclusions of law, and proposed decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130[6:135]. Certificate of Need criteria for physician exemption.~~ [the evidence has established the following:

1. The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the healing arts or group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;

5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

a. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;

b. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

c. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. Compliance with paragraph (a) 1, 4, 5, and 6 of this subsection;

2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

2.a. The office was established and in operation prior to January 31, 2006;

b. The office does not provide any services or equipment covered by the State Health Plan; or

c. At the time the office began providing care and treatment to

patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.]

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

- (a) The allegations against the person;
- (b) Any facts determined to exist which support the existence of the allegation; and
- (c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7)[business] days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a Certificate of Need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

- (a) OHP - Form 3, Notice of Appearance;
- (b) OHP - Form 4, Witness List; and
- (c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any Certificate of Need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's Certificate of Need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the Certificate of Need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's Certificate of Need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 13, 2012 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, October 9, 2012)

900 KAR 6:130. Certificate of Need criteria for physician exemption.

RELATES TO: KRS 216B.010, 216B.015, 216B.020, 216B.040, 216B.095, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Entity" means any legally recognized business entity in which an individual or group may practice its profession including a professional limited liability company, professional service corporation, partnership, or sole proprietor.

(3) "Evaluation and Management codes" means those codes recognized by the American Medical Association as procedures involving evaluation of patients and management of patient care in the Current Procedure Terminology® references.

(4) "Office" or "clinic" means the physical location at which health care services are provided by a physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts.

(5) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(6) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(7) "Practitioner of the healing arts" means a person licensed by the appropriate state agency to practice a healing art as defined in KRS 311.271(2)(a)[is defined in KRS 311.271].

(8) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(9) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person referenced in paragraph (a) or (b) of this subsection.

Section 2. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from the Certificate of Need requirements.

Section 3. Physician exemption from Certificate of Need. (1) An office or clinic that would otherwise be required to obtain a Certificate of Need shall be exempt from Certificate of Need pursuant to KRS 216B.020(2) if:

(a) The practice claiming the exemption is 100 percent owned in an organizational form recognized by the Commonwealth as one (1) in which the listed professions can be practiced by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of physicians, dentists, or advanced practice regis-

tered nurses, licensed clinical social workers, speech therapists, occupational therapists, physical therapists, psychologists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

(b) The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

(c) Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

(d) A physician or physicians licensed to practice and practicing in Kentucky within the practice and claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;

(e) Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

(f) Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

(g) Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

(h) Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued by the Office of Health Policy specifically with respect to that office or clinic~~[an identified office or clinic that sought the opinion]~~;

2. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

3. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(2) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

(a) Compliance with subsection~~[subsections]~~ (1)(a), (d), (e), and (f) of this section;

(b) The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

(c) The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(3) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

(a) The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

(b) 1. The office was established and in operation prior to January 31, 2006;

2. The office does not provide any services or equipment covered by the State Health Plan; or

3. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

~~[Section 4. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from Certificate of Need.]~~

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 13, 2012 at 11 a.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations Support
(As amended at ARRS, October 9, 2012)**

910 KAR 1:240. Certification of assisted-living communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793, ~~216.595(3)~~

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate 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. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(3) "Assisted-living community" is defined by KRS 194A.700(4).

(4) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(5) "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

(6) "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(7) "Danger" is defined by KRS 194A.700(6).

(8) "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(9) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(10) "Licensed healthcare professional" is defined by KRS 216.300(1).

(11) "Living unit" is defined by KRS 194A.700(10).

(12) "Plan of correction" is defined by KRS 194A.700(12).

(13) "Statement of danger" is defined by KRS 194A.700(13).

(14) "Statement of noncompliance" is defined by KRS 194A.700(14).

(15) "Temporary condition" means a condition that affects a client as follows:

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

(b) 1. The client loses mobility after entering a lease agreement;

2. The client is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:

(a) Calculating the fee for a year by computing twenty (20) dollars per living unit or the \$300 minimum set forth in KRS 194A.707(8), whichever is greater, but no more than the \$1,600 maximum set forth in KRS 194A.707(8);

(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee; and

(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee required by Section 2(1)(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a),(b), and (c) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit prorated in accordance with Section 2(2) of this administrative regulation.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community.

(1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from the date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. Completion of employee orientation:

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(c) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(d) Review of client records including:

1. A completed client functional needs assessment:

a. To ensure that the client met the eligibility requirements for assisted-living pursuant to KRS 194A.705(5); and

b. In which a copy was provided to the client upon move in pursuant to KRS 194A.705(5)(a);

2. An initial and at least annual functional needs assessment:

a. That reflects a client's ability pursuant to KRS 194A.705(5) to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current personal preferences and social factors;

4. A signed lease with all attachments;

5. Documentation of a client's designated representative, if applicable; and

6. Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d);

(e) Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729

using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(f) Review of an assisted-living community's written service provision and practices related to:

1. Provisions of KRS 194A.705 which, in the case of medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

a. Providing the client with a medication reminder;
b. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

c. Opening the medication container or dosage package, but not handling or removing the medication;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's abilities as specified in paragraph (d)2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

5. Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation; and

(g) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).

(3) The department may, pursuant to KRS 194A.707(10), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Waiver of Building Requirements. (1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(2) The department shall:

(a) Review ~~the waiver request for approval; and~~, ~~approve, or deny the waiver request on a case-by-case basis; and~~

(b) Not waive the building and life safety codes established in KRS 194A.703(3).

(3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the department and the assisted-living community;
2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 12[44] of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10[9](2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10).

Section 10.[9.] Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9[8](2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 9[8](9) of this administrative regulation:

1. Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

a. Email;

b. Facsimile transmission;

c. Delivery to the department by hand;

d. United States mail; or

e. Courier service; or

2. Within forty eight (48), unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

(i) Email;

(ii) Facsimile transmission;

(iii) Delivery to the department by hand;

(iv) United States mail; or

(v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 12[44] of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12[44] of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

(b) The fine shall be paid as specified in Section 11[40](1) of this administrative regulation.

Section 11[40.] Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to KRS 194A.724 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be \$250.

Section 12[44.] Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 13[42.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", edition 7/10;

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", edition 7/12[7/40];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", edition 2/09.

(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.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: August 14, 2012 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:055. Scope and applicability of the KPDES Program.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 33 C.F.R. 153, 40 C.F.R. 122, 123.44, 124.62, 144, 300, 401.15, 33 U.S.C. 1251 -1387, 42 U.S.C. 300f – 300j, ~~EO 2008-507, 2008-531~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 40 C.F.R. 122.21,300, 33 U.S.C. 1251 -1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 – 1387, subject to the conditions imposed in 33 U.S.C. 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement, or other condition that is more stringent than the effluent limitation, monitoring requirement, or other condition that would have been applicable under the federal regulation if the permit was issued by the federal government.~~[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation establishes the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements. (1) A KPDES permit shall be required to discharge pollutants from a point source into waters of the Commonwealth.

(2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.

(3) Failure to obtain a KPDES permit shall not relieve a discharger whose discharge is subject to the KPDES program from complying with the applicable performance standards of the KPDES program, 401 KAR 5:050 through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:

(a) A point source discharge identified in 40 C.F.R. 122, effective July 1, 2012[2011][2008];

(b) A concentrated animal feeding operation;

(c) A concentrated aquatic animal production facility;

(d) A discharge into aquaculture projects;

(e) A discharge from separate storm sewers; and

(f) A silviculture point source.

(2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation, may be required to obtain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section,

except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension is requested by the applicant.

(b) The question of if[whether] the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4)(a) Prior to a determination that an individual permit shall be required for a storm water discharge, the cabinet may require the discharger to submit information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e), effective July 1, 2012[2011][2008], if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of noncompliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant.

(d) The question of if[whether] the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3, effective July 1, 2012[2011][2008], or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program;

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters; or

(4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit would violate the provisions of KRS Chapter 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44, effective July 1, 2012[2011][2008];

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR 10:031; or

(4) A prohibition is established in 40 C.F.R. 122.4, effective July 1, 2012[2011][2008].

Section 6. Variance Requests from Technology-based Effluent Limitations. (1) A non-POTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m), effective July 1, 2012[2011][2008].

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o), effective July 1, 2011[2008].

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5, effective July 1, 2012[2011][2008].

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28, effective July 1, 2012[2011][2008].

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application. (1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50, effective July 1, ~~2012~~~~[2011]~~[2008].

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 2 and 4, establish those variances from technology-based requirements available to KPDES applicants. (1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15, effective July 1, ~~2012~~~~[2011]~~[2008], conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k) and after consultation with the U.S. EPA Regional Administrator, as required by 40 C.F.R. 124.62(a)(2), effective July 1, ~~2012~~~~[2011]~~.

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer the federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation.

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28 (a)(1)(vi).

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 5, 2012

FILED WITH LRC: October 5, 2012 at 3 p.m.

CONTACT PERSON: Karen Cronen, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Karen.Cronen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, requirements for dis-

posal into wells and into publicly-owned treatment works (POTW) and disposal by land application.

(b) The necessity of this administrative regulation: KRS 224.16-050 (1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific bounds for the scope of the KPDES 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: The amendment to this administrative regulation updates the citations to the corresponding federal regulations and clarifies that the state requirements are the same as the federal requirements. Specifically, the amendment clarifies that the cabinet will consult with EPA's regional administrator as required by 40 C.F.R. 124.62(a)(2), before approving innovative technology.

(b) The necessity of the amendment to this administrative regulation: 40 C.F.R. 123.62 requires the cabinet to submit for EPA's approval the Kentucky National Pollutant Discharge Elimination System administrative regulations. The most recent revisions, effective 2009, were submitted to EPA and EPA partially approved Kentucky's administrative regulations in February 2012. The revisions to this administrative regulation are necessary to clarify that Kentucky's regulations are no less stringent than the federal regulations and to gain full approval from EPA. The previously filed amendments referred to the July 1, 2011 version of 40 C.F.R. Part 122. This amendment updates the references to the July 1, 2012 version of 40 C.F.R. Part 122. The changes in that federal regulation between July 1, 2011 and July 1, 2012 include changes in the National Pollutant Discharge Elimination System Permit Regulation for Concentrated Animal Feeding Operations; specifically the removal of provision in response to the 2011 5th Circuit Court decision in the case of National Pork Producers Council v. U.S. EPA, which vacated the portion of the 2008 regulation that required CAFOs that proposed to discharge to apply for an NPDES permit, a proposed rule in the National Pollutant Discharge Elimination System (NPDES); specifically, the Concentrated Animal Feeding Operation (CAFO) Reporting Rule (N.B. this rule has been subsequently withdrawn), and the Notice of Proposed Revisions to Stormwater Regulations to clarify that an NPDES permit is not required for stormwater discharges from logging roads.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-050, which authorizes the cabinet to implement the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will clarify that Kentucky's regulation is no less stringent than the corresponding federal regulations.

(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, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. Although over 10,000 permitted entities are affected by this administrative regulation, the amendment will not change the way the program is implemented.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation does not change the way the program is implemented; so, regulated entities will not need to take any additional action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this administrative regulation, individuals, businesses, and organizations are not expected to experience any additional cost. Because these requirements are already in federal requirements, amending this administrative regulation for consistency with federal regulations will create no additional economic burden upon affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing administrative regulations and the updated federal regulations.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.

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

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

(9) TIERING: Is tiering applied? Yes. Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 40 C.F.R. 122.21,300, 33 U.S.C. 1251 -1387

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. Because these requirements are already in federal regulations, amending this administrative regulation for consistency with federal regulations will create no additional economic burden upon state or local agencies.

(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 is not expected to impact 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? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122 and U.S.C. 1251-1387.

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that delegated states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the amendment to this administrative regulation will not apply stricter standards than those required by the federal mandate.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.01-010, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023[~~EO-2008-507, 2008-534~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, subject to the conditions established in 33 U.S.C. 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.[~~EO-2008-507 and 2008-534, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055.

(2) Duty to apply.

(a)1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28, effective July 1, ~~2012~~~~[2011]~~2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008].

b. A person discharging to a POTW as established in 40

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

C.F.R. 122.3, effective July 1, ~~2012~~~~[2011]~~[2008] unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, ~~2012~~~~[2011]~~[2008].

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, ~~2012~~~~[2011]~~[2008].

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44 (k), effective July 1, ~~2012~~~~[2011]~~[2008].

(b) An applicant shall submit the appropriate application form, as established in Table 1. of this paragraph.

TABLE 1	
Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21, effective July 1, ~~2012~~~~[2011]~~[2008], as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008] and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits.

(a) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application; and

2. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

(b) Effect. A permit continued pursuant to this subsection shall remain fully effective and enforceable until the effective date of a new permit.

(c) Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet shall do the following:

1. Initiate enforcement action based upon the permit that has been continued;

2. Issue a notice of intent to deny the new permit pursuant to 401 KAR 5:075, Section 3;

3. Issue a new permit pursuant to 401 KAR 5:075 with appropriate conditions to ensure that the permit is protective of water quality; or

4. Take action authorized by KRS 224 and 401 KAR Chapter 5 [shall be as established in 40 C.F.R. 122.6, effective July 1, 2008.](5) ~~An animal feeding operation may submit Form NDCAFO to satisfy the voluntary certification of no-discharge pursuant to 40 C.F.R. 122.23(i), effective July 1, 2011~~[2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008][.]

~~(5) An animal feeding operation may submit Form NDCAFO to satisfy the voluntary certification of no-discharge pursuant to 40 C.F.R. 122.23(i), effective July 1, 2011~~[2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008][.]

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of a[any] legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender a[any] legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22, effective July 1, ~~2012~~~~[2011]~~[2008].

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23, effective July 1, ~~2012~~~~[2011]~~[2008, as amended in the Federal Register, Volume 73,

Number 225 P70480-70483, November 20, 2008].

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.62, effective July 1, 2012~~[2011]~~[as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008].

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6), effective July 1, 2012~~[2011]~~[as amended in the Federal Register, Volume 73, Number 225 P70484, November 20, 2008] shall be a minor modification as established in 40 C.F.R. 122.63, effective July 1, 2012~~[2011]~~[as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008].

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24, effective July 1, ~~2012~~~~[2011]~~[2008].

Section 7. ~~Aquaculture~~[Concentrated Aquatic Animal] Projects. A discharge into an aquaculture[aquatic animal] project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25, effective July 1, ~~2012~~~~[2011]~~[2008].

Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26, effective July 1, ~~2012~~~~[2011]~~[2008].

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27, effective July 1, ~~2012~~~~[2011]~~[2008].

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30, effective July 1, ~~2012~~~~[2011]~~[2008].

(2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32, effective July 1, ~~2012~~~~[2011]~~[2008].

(3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33, effective July 1, ~~2012~~~~[2011]~~[2008].

(4) The permit for a small MS4 shall contain~~the~~ conditions consistent with the requirements established in 40 C.F.R. 122.34, effective July 1, ~~2012~~~~[2011]~~[2008].

(5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35, effective July 1, ~~2012~~~~[2011]~~[2008].

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(4) The forms required in Section 2(2)(b) of this administrative regulation shall be substituted for the federal forms established in 40 C.F.R. 122.21, effective July 1, ~~2012~~~~[2011]~~[2008].

(5)~~[(a)]~~ The conditions for Cooling Water Phase II established in 40 C.F.R. 122.21(n)(1)(ii) shall be modified to remove the references to 40 C.F.R. 125.95, effective July 1, ~~2012~~~~[2011]~~[2008].

(6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C.F.R. 122.21(m)(6) shall be modified to 40 C.F.R. 124.62, effective July 1, ~~2012~~~~2011~~[2008].

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) KPDES Form 1, DEP 7032, February 2009;
- (b) KPDES Form A, DEP 7032A, February 2009;
- (c) KPDES Form B, DEP 7032B, February 2009;
- (d) KPDES Form C, DEP 7032C, February 2009;
- (e) KPDES Form SC, DEP 7032SC, February 2009;
- (f) KPDES Form F, DEP 7032F, February 2009;
- (g) KPDES Form NE, DEP 7032NE, February 2009; and
- (h) KPDES Form NDCAFO, DEP 7032NDCAFO, February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 5, 2012

FILED WITH LRC: October 5, 2012 at 3 p.m.

CONTACT PERSON: Karen Cronen, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Karen.Cronen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

(b) The necessity of this administrative regulation: This administrative regulation establishes specific requirements for permitting discharges into waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 – 1387, subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for several categories of permits; furthermore, the administrative regulation references specific documents and governing federal regulations relevant to the permitting process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the citations to the corresponding federal regulations and clarifies that the state requirements are the same as the federal requirements. Specifically, the amendment clarifies that the cabinet will consult with EPA's regional administrator as required by 40 C.F.R. 124.62(a)(2), before approving innovative technology.

(b) The necessity of the amendment to this administrative regulation: 40 C.F.R. 123.62 requires the cabinet to submit for EPA's approval the Kentucky National Pollutant Discharge Elimination System administrative regulations. The most recent revisions, effective 2009, were submitted to EPA and EPA partially approved Kentucky's administrative regulations in February 2012. The revisions to this administrative regulation are necessary to clarify that Kentucky's regulations are no less stringent than the federal regulations and to gain full approval from EPA. The previously filed amendments referred to the July 1, 2011 version of 40 C.F.R. Part 122. This amendment updates the references to the July 1, 2012

version of 40 C.F.R. Part 122. The changes in that federal regulation between July 1, 2011 and July 1, 2012 include changes in the National Pollutant Discharge Elimination System Permit Regulation for Concentrated Animal Feeding Operations; specifically the removal of provisions in response to the 2011 5th Circuit Court decision in the case of National Pork Producers Council v. U.S. EPA, which vacated the portion of the 2008 regulation that required CAFOs that proposed to discharge for apply to an NPDES permit, a proposed rule in the National Pollutant Discharge Elimination System (NPDES); specifically, the Concentrated Animal Feeding Operation (CAFO) Reporting Rule (N.B. this rule has been subsequently withdrawn), and the Notice of Proposed Revisions to Stormwater Regulations to clarify that an NPDES permit is not required for stormwater discharges from logging roads.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-050, which authorizes the cabinet to implement the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will clarify that Kentucky's regulation is no less stringent than the corresponding federal regulations.

(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, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. Although over 10,000 permitted entities are affected by this administrative regulation, the amendment will not change the way the program is implemented.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation does not change the way the program is implemented; so, regulated entities will not need to take any additional action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this regulation, individuals, businesses, and organizations are not expected to experience any additional cost. Because these requirements are already in federal requirements, amending this regulation for consistency with federal regulations will create no additional economic burden upon affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.

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

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

(9) TIERING: Is tiering applied? Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the

Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

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. Because these requirements are already in federal regulations, amending this regulation for consistency with federal regulations will create no additional economic burden upon state or local agencies.

(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 is not expected to impact 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? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 122 and 33 U.S.C. 1251-1387.

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that delegated states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

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

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

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

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 278.020(3), 278.300[Chapter 278]

STATUTORY AUTHORITY: KRS 278.040(3), 278.310[(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310[(2)] provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This administrative regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions.(1) "Case" means a matter coming formally before the commission.

(2) "Commission" is defined by KRS 278.010(15).

(3) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages.

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(5) "Executive Director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(6) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(7) "Party" means any person who:

(a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 19 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined as a party to a commission proceeding.

(8)[(7)] "Person" is defined by KRS 278.010(2).

(9)[(8)] "Sewage" means a utility that meets the requirements of KRS 278.010(12).

(10)[(9)] "Signature" means an original signature or an electronic signature as defined by KRS 369.102(8).

(11)[(10)] "Utility" is defined by KRS 278.010(3).

Section 2. General Offices and Hearings. (1) The commission shall be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings shall be held on days, at hours and at places as the commission may designate.

(3) The commission shall provide notice of hearing in a case by order except when a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. Verbal announcements made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Executive Director to Furnish Information. (1) Upon request, the executive director shall:

(a) Advise any person as to the form of a petition, complaint, answer, application, or other document desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, any document or record pertinent to any matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director may reject for filing any document which on its face does not comply with the administrative regulations of the commission.

Section 4. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications shall be addressed to "Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601."

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on all subsequent documents filed in the case.

(3) Signing of papers[pleadings].

(a) A paper[pleading] shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the

attorney of record or filing party.

(b) A **paper[pleading]** shall be verified or under oath when required by statute, administrative regulation, or order of the commission.

(4) A person shall not file any **paper[pleading]** on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) when appearing before the commission.

(5) Amendments. Upon motion of a party, the commission may allow any complaint, application, answer, or other **paper[pleading or document]** to be amended or corrected or any omission supplied therein. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original **paper[pleading or document]**.

(6) Witnesses and subpoenas.

(a) Upon the **written request[application]** of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission, or any commissioner, upon **written request[application in writing]**, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena with its **written request[application]** when necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on each party and any person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of Time.

(a) In computing any period of time prescribed or allowed by order of the commission or by any applicable administrative regulation or statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders otherwise, service shall be made upon the party's attorney when the party is represented by an attorney.

(b) Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it **by United States mail or other recognized mail carrier** to the attorney or party at the last known address or by sending it by electronic means to the electronic mail address listed on **papers[pleadings]** that the attorney or party has submitted in the case. Service shall be complete upon mailing or electronic transmission. **If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action. [but electronic transmission shall not be effective if the serving party learns that it did not reach the person to be served.]**

(9) Filing.

(a) Unless electronic filing procedures set forth in Section 8 of this administrative regulation are used, a document shall not be deemed filed with the commission until it is physically received by the executive director at the commission's offices during the commission's official business hours.

(b) The executive director shall endorse upon each **paper[pleading]** or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the **paper[pleading]** or document.

(10) Privacy protection for filings.

(a) If a party files a document containing an individual's social security number, taxpayer identification number, birth date, or a financial account number, the party shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) To redact the document, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(c) The executive director shall not be required to review documents for compliance with this section. The responsibility to redact a document shall rest with the party that files the document.

(11) Intervention and parties.

(a) In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that leave to intervene be granted. The motion shall include the movant's name and address and shall state his or her interest in the proceeding and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(b) The commission shall grant a person leave to intervene if it finds that a person has a special interest in the case which is not otherwise adequately represented or that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) **Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a party shall serve a person[Persons] granted leave to intervene[shall be served] with filed testimony, exhibits, papers[pleadings], correspondence, and all other documents that the party submits[submitted by the parties] in the case after the order granting intervention, but is not required to provide any documents submitted prior to the issuance of that order.**

(d) Any person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case. These comments shall be filed in the case record. **A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.**

Section 5. Motion Practice. (1) All requests for relief which are not required to be made in **an application, petition, or written request[a pleading]** shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file any response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file any reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be **confined to points raised[limited to the matters initially raised] in the responses to which they are addressed, and shall not reiterate an argument already presented[to the party's motion].**

Section 6. Certificate of Service. All documents served under these administrative regulations shall have a proof of service certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures set forth in Section 8 of this administrative regulation are used, when **a[an original] document in paper medium** is filed with the commission, ten (10) additional copies **in paper medium** shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Filings shall be printed or typewritten, double spaced and on one (1) side of the ~~paper~~**[paper]** only.

(b) Size. Filings shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock.

(c) Font. Filings shall be in type no smaller than twelve (12) point, except footnotes which may be in type no smaller than ten (10) point.

(d) Binding. Any side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in Section 8 of this administrative regulation, any filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) Documents submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon ~~order~~**[motion]** of the commission **in a case that the commission has initiated on its own motion**, the procedures established in this section shall be used in lieu of other filing procedures set forth in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Electronic Filing Procedures Form; and

(b) If it does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

(3) All ~~papers~~**[pleadings]**, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) original with the commission as required by subsection (12)(a)2. of this section.

(4) Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the ~~paper~~, **except that documents filed in response to requests for information need not be individually bookmarked**~~[pleading or document]~~; and

(e) If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)(a) All electronic submissions shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all materials not included in the electronic filing; and

3. A statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the ~~paper~~ **medium** filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the ~~paper~~ **medium** version (e.g., confidential materials, materials that are too large to transfer by electronic medium), the absence of these documents shall be noted in the "Read1st" document.

(6)(a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filer shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7) If filing any document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)(a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file repository at <http://psc.ky.gov> and view or download the submission.

(9) Unless it states its objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all ~~papers~~**[documents and pleadings]**, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting its intervention a written statement that:

1. It waives any right to service of commission orders by United States mail; and

2. It, or its authorized agent, possesses the facilities to receive electronic transmissions.

(10) Unless a party to a case states its objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and ~~papers~~**[pleadings]**, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:

1. It waives any right to service of commission orders by United States mail; and

2. It, or its authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and the commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with Section 4(8) of this administrative regulation.

(12)(a) A document shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements imposed by this administrative regulation and any order of the commission; and

2. The original document, in paper medium, is filed at the commission's offices no later than the second business day following the electronic filing.

(b) Parties shall attach to the top of the paper submission a~~paper~~ **copy in paper medium** of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

(13) Except as expressly provided in this section, a party making a filing in accordance with the procedures set forth in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Except as otherwise determined in specific cases, the commission shall grant a hearing in the following classes of cases:

(a) If an order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the satisfaction of the commission; or

(b) If an application has been made in a formal proceeding.

(2) Publication of notice.

(a) Upon the filing of any application, the commission may order an applicant to give notice on all other persons who may be affected by service of a copy of the application upon those persons or by publication. The applicant shall bear the expense of providing the notice. If the notice is given by publication, the commission may designate the length of time and the newspaper in which the notice shall appear. Proof of the publication shall be filed at or before the hearing.

(b) **The commission may order an applicant to give notice to the public of any hearing on the applicant's application. If notice of a hearing pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place, and date of hearing. The applicant shall bear the expense of providing the notice.**

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission may believe is in violation of any law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain any evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a **motion[request]** of a party, may convene a conference~~[either prior to, or during the course of hearings]~~ in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. **Unless the commission directs otherwise or the parties otherwise agree, participation[To provide opportunity for settlement of a proceeding or any issues, the parties to a proceeding may meet in the presence of commission staff upon approval of the executive director. Participation]** in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for its objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be in digital video recording. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a reporter approved by the commission. The commission shall grant the motion. The requesting party shall bear the cost of the stenographic transcript and shall ensure a copy of the transcript is filed with the commission within a reasonable time after completion of the hearing.

(b) The commission shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. (1) All briefs shall be filed within the time

fixed. The commission may refuse to consider any brief filed beyond the time fixed. Any request for extension of time to file a brief shall be made to the commission by written motion.

(2) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.~~[(3) A person wishing to submit an amicus curiae brief shall file a motion with the commission specifying with particularity the nature of his or her interest, the points to be presented, and their relevance to the disposition of the case. This motion shall be filed within fifteen (15) days of the time fixed for the filing of the parties' briefs. An amicus curiae brief shall be tendered with the motion.]~~

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If any immaterial matter unnecessarily encumbers the record, the book, paper or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) The sheets of each exhibit~~[and the lines of each sheet]~~ shall be numbered. **If practical, the lines of each sheet shall also be numbered.** If~~and if~~ the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission shall not receive in evidence or consider as a part of the record any book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record shall not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before the court, at the request of any party.

Section 12. Financial Exhibit. If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed. The exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized;
(2) Amount and kinds of stock issued and outstanding;
(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise;
(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with any sinking fund provisions;

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year.;

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(9) Detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the commission or the official custodian of the commission's records determines the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) Any person requesting confidential treatment of any material shall file a motion that:

1. Sets forth specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes, in a separate sealed envelope marked confidential, [and 2. Attaches] one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion, one (1) copy of the material in paper medium which is identified by underscoring or highlighting, and ten (10) copies of the material in paper medium with those portions obscured for which confidentiality is sought, shall be filed with the commission. **If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.**

(c) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The motion shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.878 **and to demonstrate the time period for which the material should be considered as confidential** shall be upon the party requesting confidential treatment.

(e) Any party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

(f) If the case is being conducted using electronic filing procedures set forth in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unobscured copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a formal proceeding.

(a) Any person requesting confidential treatment of any material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Sets forth specific grounds upon which the material should be classified as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes, in a separate sealed envelope marked confidential, [and 2. Attaches] one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or

portions thereof which do not contain confidential material shall not be included in this identification. **If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.**

(b) The written request, one (1) copy of the material in paper medium which is identified by underscoring or highlighting, and one (1) copy of the material in paper medium with those portions obscured for which confidentiality is sought, shall be filed with the commission. **If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.**

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements set forth in KRS 61.878 **and to demonstrate the time period for which the material should be considered as confidential** shall be upon the person requesting confidential treatment.

(d) The executive director, as official custodian of the commission's records, shall determine if the material falls within the exclusions from disclosure requirements set forth in KRS 61.878 **and the time period for which the material should be considered as confidential** and shall advise the requestor of the determination by letter.

(e) A person whose request for confidential treatment is denied, **in whole or in part**, by the executive director may petition the commission for confidential treatment of the material in accordance with the procedures set forth in subsection (2) of this section. The commission shall review the petition without regard to the executive director's determination.

(4) Pending commission action on a request or motion for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the petition, motion or request for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 **to bring an action for review [twenty (20) days to allow the petitioner to seek any remedy afforded by law].**

(6) Procedure for any party to request access to confidential material filed in any proceeding.

(a) A party to any proceeding before the commission shall not fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within seven (7) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in this section shall not limit the right of any person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(8) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material during formal proceedings. (a) Any party that files material that contains or reveals material that

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

has previously been deemed confidential shall submit with the filed material:

1. A written notice identifying the date on which the confidentiality of the original material was determined and, if applicable, the case number in which the determination was made; and

2. One (1) copy of the filed material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality has previously been granted.

(b) Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential[Unless the commission orders otherwise, confidential] treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.[no more than two (2) years.] At the end of this period,[the person who sought confidential treatment for the material shall request that the material continue to be treated as confidential and shall demonstrate that the material still falls within the exclusions from disclosure requirements set forth in KRS 61.878. Absent any showing, the material shall be placed in the public record. If a request is not made for continued confidential treatment,] the material shall be placed in the public record without notice to the person who originally requested confidential treatment. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct him to demonstrate within twenty (20) days of his receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If he is unable to make the demonstration, the commission shall make the requested materials available for public inspection. Otherwise, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 14. Applications. (1) Contents of application. All applications shall be by petition. The petition shall set forth the full name, mailing address, and electronic mail address of the appli-

cant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for same.

(2) Articles of incorporation.

(a) If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(b) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(c) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation, partnership agreement, or articles of organization pursuant to Section 14(2) of this administrative regulation;

(b) The name of the governmental agency offering the franchise;

(c) The type of franchise offered; and

(d) A statement showing the need and demand for service. If the applicant is successful in acquiring the franchise, license or permit, it shall file a copy with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit the following data, either in the application or as attached exhibits:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete;

(d) Maps to suitable scale showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities. The utility shall supply one (1) copy of each map in an electronic format and one (1) copy of each map in a paper format;

(e) The manner in detail in which it is proposed to finance the new construction or extension;

(f) An estimated **annual** cost of operation[**thirty (30) days**] after the proposed facilities are **placed into service**[**completed**]; and

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equip-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

3. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

4. Any new or revised tariff sheets in a format which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

5. Any new or revised tariff sheets identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

6. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

7. For the purposes of this administrative regulation, an affiliate is an entity:

a. That is wholly owned by a utility;

b. In which a utility has a controlling interest;

c. That wholly owns a utility;

d. That has a controlling interest in a utility; or

e. That is under common control with the utility.

8. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:

a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and

b. Exercises that power:

(i) Through one (1) or more intermediary companies, or alone;

(ii) In conjunction with, or pursuant to an agreement;

(iii) Through ownership of ten (10) percent or more of the voting securities;

(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies;

(v) Contract; or

(vi) Any other direct or indirect means.

(2) Notice of intent. A utility with gross annual revenues greater than \$5,000,000 shall notify the commission in writing of intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. When filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from the applicant of the full schedule of increases or rate changes. The applicant shall also transmit by electronic mail a copy of the notice in a portable document format to the Attorney General's Office of Rate Intervention at rateintervention@ag.ky.gov.

(3) Manner of notification.

(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall:

1. Mail written notice to each customer no later than the date on which the application is filed with the commission. The notice shall meet the requirements set forth in subsection (4) of this section;

2. Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and

3. Keep the notice posted until the commission has issued a final decision on the application.

(b) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (4) of this section and shall:

1. Include notice with customer bills mailed by the date the application is filed;

2. Publish notice in a trade publication or newsletter going to all customers by the date the application is filed; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the application is filed.

(c) Utilities providing service in multiple counties may use a combination of the notice methods listed in **paragraph (b) of this subsection.**

(d) Notice given pursuant to this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.[subsection (3)(b) of this section.]

(4) Notice Requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply, except for local exchange companies which shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that any corporation, association, or person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that sets forth the grounds for the request including the status and interest of the party, and states that intervention may be granted beyond the thirty (30) day period for good cause shown;

(f) A statement that written comments regarding the proposed rate may be submitted to the Public Service Commission by mail or through the Public Service Commission's Web site;

(g) A statement that any person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(h)(g) A statement that this filing and any other related documents can be found on the Public Service Commission's Web site at <http://psc.ky.gov/>.

(5) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If its notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was

mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(6) Additional notice requirements. In addition to the notice requirements listed in subsection (4) of this section:

(a) A utility shall post a sample copy of the required notification at its place of business no later than the date on which the application is filed and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates; and

(b) A utility that maintains a public web site shall, within seven (7) days of filing an application, post a copy of the public notice as well as a hyperlink to its filed application on the commission's Web site and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates.

(7) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the required information.

(8) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(9) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$5,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$5,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) 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;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the

required information has been filed in another commission case, a reference to that case's number ~~and style~~ shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. 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;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) 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.

(11) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(12) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:

1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. MCF sales forecasts (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of any other information provided;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number ~~[and style]~~ shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the develop-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ment of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage utility, or water utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(13) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data:

(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(14) The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure any deficiencies within thirty (30) days of the commission giving notice of any deficiencies.

(15) A request for waiver of any of the provisions of these filing requirements shall set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:

(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and

(c) The expense to the utility in providing the information which is the subject of the waiver request.

Section 17. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, the application, in addition to complying with the requirements of Section 14 of this administrative regulation, shall contain:

(a) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured;

(c) The use to be made of the proceeds of the issue of any securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(d) The property in detail which is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities set forth in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of any property, or for any construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition;

(e) If it is proposed to discharge or refund obligations, a state-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ment of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the petition shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(f) Any other facts as may be pertinent to the application.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference shall be made by, by style and case number[,] to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 18. Application[Petition] for Declaratory Order. (1) The commission may, upon application by any person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to any person, property or state of facts of any order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of any order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates order or administrative regulation; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may in its discretion direct that a copy of the application for a declaratory order be served on any person the commission deems may be affected by the application.

(4) Responses, if any, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission or within the time the commission directs; and be served upon the applicant.

(5) Replies to responses may be filed with the commission within fourteen (14) days after service, or within the time the commission directs.

(6) All applications, responses and replies containing allegations of fact shall be supported by affidavit or verified.

(7) The commission may in its sole discretion dispose of an application for a declaratory order solely on the basis of the written submissions filed before it.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials.

Section 19. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

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

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

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired.

(2) Signature. The complaint shall be signed by the complainant or his or her attorney, if any, and if signed by an attorney, shall show the attorney's post office address. Complaints by corporations or associations, or any other organization having the right

to file a complaint, shall be signed by its attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it shall notify the complainant or his or her attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within the time or the extension as the commission, for good cause shown, may grant, it shall be dismissed.

(b) If the commission is of the opinion that the complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon any person complained of under the hand of its executive director and attested by its seal, accompanied by a copy of the complaint, directed to the person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may, in particular cases, require the answer to be filed within a shorter or longer period[time].

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which the defendant is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, further proceedings shall not be taken.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the person complained of shall file an answer to the complaint, with certificate of service on other endorsed parties, within the time specified in the order or the extension as the commission, for good cause shown, may grant. The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him or her to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground.

Section 20. Informal Complaints. (1) Informal complaints shall be made to the commission's division of consumer services in any manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 21. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FERC Form-1", Annual Report of Major Electric Utilities,

Licensees and Others, March 2007:

(b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007:

(c) "PSC Notice of Electronic Filing Procedures Form", July 2012:

(d) "PSC Form-T (telephone)", August 2005:

(e) "SEC Form-8K", January 2012:

(f) "SEC Form-10K", January 2012; and

(g) "SEC Form-10Q", January 2012:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/> [1]. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

(a) Each person granted leave to intervene shall be considered

as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

(b) If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions

for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.

(2) Procedure for determining confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with the portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.

(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.

(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

(9) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this administrative regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will

require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this administrative regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:

(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

(b) A fully forecasted test period and shall include:

1. A statement of the reason the adjustment is required;

2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);

3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;

7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative

form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

10. For the purposes of this administrative regulation, an affiliate is an entity that:

- a. Is wholly owned by a utility; or
- b. In which a utility has a controlling interest; or
- c. That wholly owns a utility; or
- d. That has a controlling interest in a utility; or
- e. That is under common control with the utility.

11. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:

- a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and
- b. Exercises such power:

- (i) Through one (1) or more intermediary companies, or alone; or
- (ii) In conjunction with, or pursuant to an agreement; or
- (iii) Through ownership of ten (10) percent or more of the voting securities; or
- (iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies; or
- (v) Contract; or
- (vi) Any other direct or indirect means.

(2) Notice of intent. Utilities with gross annual revenues greater than \$1,000,000 shall file with the commission a written notice of intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.

(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:

(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;

(c) Electric, gas, water and sewer utilities shall include the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) Local exchange companies shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(f) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown;

(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;

(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and

(i) The commission may grant a utility with annual gross revenues greater than \$1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates

provided the notice includes a coupon which may be used to obtain all of the information required herein.

(4) Manner of notification.

(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.

(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.

(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:

1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;

2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or

3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.

(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.

(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than thirty (30) days of the filed date of the application.

(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.

(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.

(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(6) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) A statement estimating the effect that the new rate(s) 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;

(e) If the utility provides electric, gas, water or sewer service the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is a local exchange company the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to deter-

mine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. 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;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the test period was reasonable;

(u) If the utility provides gas, electric or water utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(7) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just

and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments;

(e) 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.

(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless such revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(9) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall

be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:

1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified; and

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. MCF sales forecasts (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of any other information provided;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent

months, as they become available;

(p) The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the base period is reasonable;

(v) If the utility provides gas, electric or water utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time. The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. The utility may cure such filing deficiencies within thirty (30) days' written notice from the commission.

(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:

(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and

(c) The expense to the utility in providing the information which is the subject of the waiver request.

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this administrative regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of

interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

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

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

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as afore-said, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this administrative regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

- (a) Formal complaint.
- (b) Answer.
- (c) Application.
- (d) Notice of adjustment of rates.
- (2) Forms of formal complaint.
- Before the Public Service Commission
- (Insert name of complainant))
- Complainant)
-) No. _____
- vs.) (To be inserted by the
-) secretary)
- (Insert name of each defendant))
- Defendant)

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of _____, 19____.

(Name of each complainant)
Name and address of attorney, if any)
(3) Form of answer to formal complaint.
Before the Public Service Commission
(Insert name of complainant))
COMPLAINANT)
) No. _____
vs.) (To be inserted by the
) secretary)
(Insert name of each defendant))
DEFENDANT)

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

(Name of defendant)
(Name and address of attorney, if any)
(4) Form of application.
Before the Public Service Commission
In the matter of the application of)
(here insert name of each)
applicant) for (here insert desired) No. _____
order, authorization, permission) (To be inserted by the
or certificate, thus: "Order) secretary)
authorizing issue of stocks)
and bonds))

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____, 19____.

(Name of applicant)
(Name and address of attorney, if any)
(5) Form of notice to the commission of adjustment of rates.
Before the Public Service Commission
In the matter of adjustment) No. _____
of rate of the (state name) (To be inserted by the
of corporation).) the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19____, in conformity with the attached schedule.

(See Section 9 of this administrative regulation for required information.)

(Name and address of company)
(Name and address of attorney)

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: October 12, 2012

FILED WITH LRC: October 15, 2012 at 10 a.m.

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules of procedures for the hearings and formal proceedings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide the structural framework for hearings and formal proceedings that the Public Service Commission conducts.

(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.

(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: It clarifies the procedures for obtaining confidential treatment of materials submitted to the commission and places a person seeking such treatment on notice that he must propose a time period for which confidential treatment will be afforded. It further clarifies the types of documents which are subject to the commission's rules of procedure. It also clarifies the contents of notices that an applicant must provide to the public to announce a proposed rate change and the scheduling of a hearing.

(b) The necessity of the amendment to this administrative regulation: There is considerable confusion regarding the commission's procedures for reviewing petitions for confidential treatment. This regulation establishes a procedure for expedited and prompt review of requests made outside of formal proceedings and addresses areas of uncertainty that have existed since the regulation's last amendment in 1993.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all proceedings before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides an administrative framework for addressing issues arising under KRS 61.870-.884 that arise before the commission in both formal and informal proceedings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all utilities regulated by the Public Service Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require additional actions by the utilities, but rather provides more choices and flexibility when filing with the commission.

(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 to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment generally reflects and incorporates informal practices and procedural

devices that the Public Service Commission has developed and used in formal proceedings since the last revision to its rules of procedure. For a utility that electronically files a case before the commission, this amendment is expected to reduce litigation costs and expedite a final decision.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(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 or will be required.

(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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

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) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

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:

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

807 KAR 5:006. General Rules.

RELATES TO: KRS Chapter 278, 49 C.F.R. Part 192, 49 U.S.C. 60105

STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. Part 192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) provides that every utility shall file with the commission any reports, schedules or other information that the commission reasonably requires. KRS 278.280(2) provides that the commission [Public Service Commission (hereinafter referred to as "commission")] shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities. [This administrative regulation includes the substance of 807 KAR 5:008, which it repeals.]

Section 1. Definitions. (1) "Built up community" means urban areas and those areas immediately adjacent.

(2) "Commission" is defined in KRS 278.010(15).

(3) "Corporation" is defined in KRS 278.010(1).

(4) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.

(5) "Gross Annual Operating Reports" means reports that KRS 278.140 requires each utility to file with the commission.

(6) "Nonrecurring charge" means a charge or fee assessed to customers to recover the specific cost of an activity, which:

(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges shall not be incurred; and

(b) Is limited to only recover the specific cost of the specific service.

(7) "Person" is defined in KRS 278.010(2).

(8) "Tariff" means a utility's schedule of all its rates, charges, tolls, maps, terms and conditions of service over which the commission has jurisdiction.

(9) "Utility" is defined in KRS 278.010(3).

(10) "Water Association" means any non-profit corporation, association or cooperative corporation having as its purpose the furnishing of a public water supply.

(11) "Water District" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. General Provisions. Any reference to standards or codes in 807 KAR Chapter 5 commission administrative regulations shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

Section 3. Utility Contact Information. (1) A utility shall notify the commission in writing of:

(a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state and zip code;

(b) The name, telephone number, facsimile number and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and

(c) Its electronic mail address.

(2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.

(3) A utility shall notify the commission in writing of any change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

Section 4. Reports. (1) Gross Annual Operating Revenue Reports.

(a) Each utility shall file with the commission its gross operating revenue report on or before March 31 of each year.

(b) An extension request shall not be permitted for Gross Annual Operating Revenue Reports.

(c) A utility may file an amendment to its report with the commission on or before May 24 of the same year.

(d) The commission shall:

1. Not certify to the Department of Revenue the amounts of intrastate business set forth in any amendment filed with the commission after May 24 of that year; and

2. Report those amounts to the Department of Revenue for informational purposes.

(2) Financial and statistical reports.

(a) Every utility shall file annually using the commission's electronic filing system a financial and statistical report on or before March 31 of each year.

(b) This report shall be based upon utility type and the accounts established in conformity with the uniform system of accounts prescribed for that utility type.

(c) If documents are required to supplement or complete the report and cannot be submitted through the commission's electronic filing system, the utility shall file these documents in paper form with the commission no later than March 31.

(d) The commission shall make the reporting forms available on the commission's Web site at <http://psc.ky.gov/>.

(e) For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for the filing.

(3) Financial statement audit reports. A utility required to file a report in accordance with section 4(2) of this regulation shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for the filing.

(4) Report of meters, customers and refunds. Each gas, electric, or water utility shall file quarterly either a Quarterly Meter Report-Electric, Quarterly Meter Report, or a Quarterly Meter Report-Electric-Gas-Water, of meter tests, number of customers, and amount of refunds.

(5) Report of terminations for nonpayment of bills. Each water, electric, or gas utility shall file either the Water Utility Non-Payment Disconnection/Reconnection Report, Electric Utility Non-Payment Disconnection/Reconnection Report, or Gas Utility Non-Payment Disconnection/Reconnection Report, annually to report the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(6) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.

(7) Transmittal letter. Each report shall be accompanied by a transmittal letter describing the report being furnished.

(8) Amending reports. Upon discovering a material error in any report that it has filed with the commission, a utility shall file an amended report to correct the error.

Section 5. Service Information. (1) (a) A utility shall, on request, give its customers or prospective customers information that enables the customers to secure safe, efficient and continuous service.

(b) A utility shall inform its customers of any change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished that would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, a utility shall apply for the commission's approval. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(3) The utility shall inform each applicant for service of each type, class and character of service available at each location.

Section 6. Special Rules or Requirements. (1) A utility shall not establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) Unless specifically authorized by this administrative regulation, no utility shall deny or refuse service to a customer who has complied with all conditions of service set forth in the utility's tariff on file with the commission

(3)(a) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.

(b) A utility shall not:

1. Require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or

2. Refuse to provide service to any prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.

(c) The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with 807 KAR 5:041, 807 KAR 5:061 or 807 KAR 5:066.

Section 7. Billings, Meter Readings and Information. (1) Information on bills.

(a) Each bill for utility service issued periodically by a utility shall clearly show:

1. The date the bill was issued;

2. Class of service;

3. Present and last preceding meter readings;

4. Date of the present reading;

5. Number of units consumed;

6. Meter constant, if any;

7. Net amount for service rendered;

8. All taxes;

9. Any adjustments;

10. The gross amount of the bill;

11. The date after which a penalty may apply to the gross amount; and

12. Whether the bill is estimated or calculated.

(b) The rate schedule under which the bill is computed shall be posted on the utility's Web site, if it maintains a Web site, and shall also be furnished under one (1) of the following methods:

1. By printing it on the bill;

2. By publishing it in a newspaper of general circulation once each year;

3. By mailing it to each customer once each year; or

4. By providing a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly set out the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form, including any e-bill form, to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading.

(a) Except as provided in paragraph (b) or (c) of this subsection, each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly;

(b) Each customer-read meter shall be read manually, at least once during each calendar year.

(c) Each customer meter using remote reading technology shall be inspected for proper working condition and **the meter registration recorded[readings verified]** at the intervals established in **Section 26(4)(e), Section 26(5)(a)(2), or Section 26(6)(b)** of this administrative regulation.

(d) Records shall be kept by the utility to insure that the information required by this subsection is available to the commission

and any customer requesting this information.

(e) If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 8. Deposits. (1) Determination of deposits.

(a) A utility may require from any customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 16 of this administrative regulation.

(b) A utility shall not require a deposit based solely on the customer being a tenant or renter.

(c) The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class.

(d) The amount of a cash deposit shall be determined by one (1) of the methods established in this paragraph.

1. Calculated deposits.

(a) If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period.

(b) If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system.

(c) Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

2. Equal deposits.

(a) A utility may establish an equal deposit amount for each class based on the average bill of customers in that class.

(b) Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

3. Recalculation of deposits.

a. If a utility retains either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit shall be recalculated every eighteen (18) months based on actual usage of the customer.

b. The notice of deposit recalculation shall be included:

(i) On the customer's application for service;

(ii) On the receipt of deposit; or

(iii) Annually with or on customer bills.

c. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, the utility shall refund any over-collection and may collect any underpayment.

d. Refunds shall be made either by check, electronic funds transfer, or by credit to the customer's **account[bill]**, except that a utility shall not be required to refund any excess deposit if the customer's **account[bill]** is delinquent when the deposit is recalculated.

(2) Waiver of deposits. Deposits may be waived at the discretion of a utility in accordance with criteria set forth in its tariff.

(3) Additional deposit requirement.

(a) If a deposit has been waived as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's tariff, a utility may require a deposit.

(b) If a substantial change in the customer's usage has occurred, the utility may require an additional deposit.

(c) An additional or subsequent deposit shall not be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(d)3 of this section.

(4) Receipt of deposit.

(a) A utility shall issue to every customer from whom a deposit is collected a receipt of deposit.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(b) The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit.

(c) If the notice of recalculation described in subsection (1)(d)3 of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification.

(d) If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as provided by Section 16 of this administrative regulation, a utility may refuse or discontinue service to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits.

(a) Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit.

(b) Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis.

(c) If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, or the last interest payment date, the payment or credit shall be on a prorated basis.

(d) Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Interest on deposits for water districts and associations.

(a) A water district or association that maintains a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for the customer deposit account.

(b) A water district or association that does not maintain a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at a rate that is the weighted average rate of all of its interest bearing accounts as of December 31 of the previous year.

(c) If the water district or association does not have any funds in an interest-bearing account, the water district or association shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for a basic savings account at the financial institution where the water district or association maintains its operation and maintenance account.

(8) Tariff requirements. A utility that chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining when a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(d)(2)(b) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable; and

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 9. Nonrecurring Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) Nonrecurring charges shall be included in a utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) Nonrecurring charges shall include the charges listed in this subsection and may include other customer specific costs in accordance with this section and 807 KAR 5:011 section 10.

(a) Turn-on charge.

1. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service.

2. A turn-on charge shall not be made for initial installation of service if a tap fee is applicable.

(b) Reconnect charge.

1. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or 807 KAR Chapter 5.

2. Customers qualifying for service reconnection under Section 16 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge.

1. A charge may be assessed if a utility representative makes a trip to the premises of a customer for the purpose of terminating service.

2. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the utility representative agrees to delay termination based on the customer's payment or agreement to pay the delinquent bill by a specific date.

3. The utility shall not make a field collection charge more than once in any billing period.

(d) Special meter reading charge. This charge may be assessed if:

1. A customer requests that a meter be reread, and the second reading shows the original reading was correct. A charge shall not be assessed if the original reading was incorrect; or

2. A customer who reads his or her own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 19 of this administrative regulation, and the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022 Section 8(3)(a)(1) and 8(3)(b)(1); 807 KAR 5:041, Section 17(1); or 807 KAR 5:066, Section 15(2)(a).

(g) Returned payment charge. A returned payment charge may be assessed if any form of accepted payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment charge. A late payment charge may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The late payment charge may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional late payment charges shall not be assessed on unpaid late payment charges.

Section 10. Customer Complaints to the Utility. (1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of its findings.

(2) The utility shall keep a record of all written complaints concerning its service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission, and shall provide the customer with the mailing address, Web site address and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or right to file a complaint with the commission and the mailing address, Web site address and telephone number of the commission.

Section 11. Bill Adjustment for Gas, Electric or Water Utilities.

(1) If, upon periodic test, request test, or complaint test, a me-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ter in service is found to be in error in excess of the limits allowed by 807 KAR 5:022, Section 8(3)(a)(2); 807 KAR 5:041, Section 17(1); or 807 KAR 5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error.

(2)(a) If test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except if a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall:

1. Immediately determine the period during which the error has existed;

2. Recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer; and

3. Readjust the account based upon the period during which the error is known to have existed.

(b)1. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using the data as elapsed time since the last meter test, if applicable, and historical usage data for the customer.

2. If that data is not available, the average usage of a similar class of customers shall be used for comparison purposes in calculating the time period.

(c) If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue.

(d) In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after the investigation is complete.

(e) A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage.

(a) A utility shall monitor a customer's usage at least quarterly according to procedures that shall be included in its tariff.

(b) The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation.

(c) If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average meter error greater than two (2) percent fast or slow.

(4) Usage investigation.

(a) If a utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing:

1. Within ten (10) days of removing the meter from service, that a usage investigation is being conducted and the reasons for the investigation; and

2. Within ten (10) days upon completion of the investigation of the findings of the investigation.

(b) If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(c) If the meter shows an average meter error greater than two (2) percent fast or slow, the utility shall maintain the meter in question at a secure location under the utility's control, for a period of **six (6) months[one (1) year]** from the date the customer is notified of the finding of the investigation **and the time frame the meter will be secured by the utility** or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, (date), the meter bearing identification No. _____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast

or slow). The meter was tested on _____ (Periodic, Request, Complaint) test. Based upon these test results the utility will _____ (charge or credit) your account in the sum of \$ _____, which has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you shall notify this office in writing within seven (7) days of the date of this notice.

(6) A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer

(a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and

(b) Stays current on subsequent bills.

Section 12. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

Section 13. Customer's Request for Termination of Service.

(1)(a) Any customer desiring service terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.

(b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.

(c) If the customer notifies the utility of his request for termination by telephone, the burden of proof shall be on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff.

(3) Any utility desiring to establish a termination or reconnection charge under the provisions of subsection (2) of this section shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 14. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints.

(a) Available telephone numbers. Each utility shall:

1. Maintain a telephone;

2. Publish ~~shall publish~~ the telephone number in all service areas; and

3. Permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of this regulation; 807 KAR 5:001 Section 13; KRS 278.160(2); and KRS 278.225 regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each water, sewer, electric, or gas utility having annual operating revenues of \$250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding legal holidays.

2. Each water, sewer, electric, or gas utility having annual operating revenues of less than \$250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

(c) Display of customer rights.

1. Each utility shall prominently display in each office open to the public for customer service, and shall post on its Web site, if it maintains a Web site, a summary, prepared and provided by the commission of the customer's rights under this section and Section 16 of this administrative regulation.

2. If a customer indicates to any utility personnel that he or she is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for an explanation of his or her rights.

(d) Utility personnel training.

1. The chief operating officer of any utility that provides electric or gas service to residential customers shall certify under oath annually the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section.

2. If the electric or gas utility is not incorporated in Kentucky and its corporate headquarters is not located in Kentucky, then its highest ranking officer located in Kentucky shall make the required certification.

3. Training shall include an annual review of this administrative regulation and policies regarding winter hardship and disconnect administrative regulations, Cabinet for Health and Family Services (or its designee) policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies.

4. Certification shall include written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing **or electronically recorded**, state the date and the amount of payment due. **Written partial payment plans shall** be dated and signed by **both parties** ~~(the utility representative)~~, and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for water, gas and electric utilities. A water, gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under this plan, a utility shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of leveled adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers and may be offered to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the

condition of its meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at the inspections. The utility shall not be required to render service to any customer until all defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 16 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours or close of the next business day, whichever is later, and shall install and connect new service within seventy-two (72) hours or close of the next business day, whichever is later, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and the commission's administrative regulations have been met.

(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the customer's last known address. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 15 of this administrative regulation.

Section 15. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or the commission's administrative regulations. A utility may terminate service for a customer's failure to comply with applicable tariffed rules or the commission's administrative regulations pertaining to that service. However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or the commission's administrative regulations without first having made a reasonable effort to obtain customer compliance. After the effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 14(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to a utility's service that could subject any person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. The action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 14(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 16 of this administrative regulation, a utility shall not be required to furnish new service to any **person contracting for service** ~~customer~~ who is indebted to the utility for service furnished or other tariffed charges until that **person contracting for service** ~~customer~~ has paid his indebtedness.

(e) For noncompliance with state, local or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal or other codes, rules and administrative regulations applying to the service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 14(5) of this administrative

regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any person contracting for service[customer] for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 14(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill. The termination notice to residential customers shall include written notification to the customer of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Cabinet for Health and Family Services (or its designee) to contact for possible assistance.

2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.

4. This subsection shall not prevent or restrict a utility from discontinuing service when a sewer service provider requests discontinuance of a customer's water service pursuant to KRS 74.408, KRS 96.934 or KRS 220.510, nor shall it restrict a water district from discontinuing water service to a customer who has failed to pay his bill for sewer service that the water district has provided.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.

(2) A utility shall not terminate service to a customer if:

(a) Payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service payment of the amount in arrears is received by the utility, service shall not be terminated.

(b) A payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 14 of this administrative regulation and the customer is meeting the requirements of the plan.

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation. A utility shall not require a new deposit from a customer to avoid termination of service

for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Health and Family Services (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents the certificate to the utility. Customers eligible for certification from the Cabinet for Health and Family Services shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 14 of this administrative regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 16. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 14(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 15(1)(f) of this administrative regulation prior to application for reconnection, and who applies for reconnection during the months from November 1 through March 31 if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services (or its designee), including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or \$200, whichever is less; and

(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if the customer applies for reconnection and the customer has an outstanding bill in excess of \$600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then the plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.

(2) Certificate of need for reconnection. A customer who is eligible for energy assistance under the Cabinet for Health and Family Services' guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the cabinet (or its designee) to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need under this administrative regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.

(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.

Section 17. Meter Testing. (1) All electric, gas and water utili-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ties furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for use by any customer, an electric, gas and water meter shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type and serial number of standards used to make the tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration.

(4) An electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by commission administrative regulations.

(5) A utility or agency desiring to have an employee certified as meter tester shall submit the name of each applicant on an "Application for Appointment of Meter Tester." The applicant shall pass a written test administered by commission staff and have his competency in the testing of meters verified by commission staff, at which time the applicant may be certified as a meter tester and furnished with a card authorizing him to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 18. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. The record shall include:

1. Information to identify the unit and its location;
2. Date of tests;
3. Reason for the tests;
4. Readings before and after test;
5. Statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed;
6. Notations showing that all required checks have been made;
7. Statement of repairs made, if any;
8. Identifying number of the meter;
9. Type and capacity of the meter; and
10. The meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. (a) A utility shall keep numerically arranged and properly classified records for each meter that it owns, uses and inventories.

(b) These records shall include:

1. Identification number,
2. Date of purchase,
3. Name of manufacturer,
4. Serial number,
5. Type,
6. Rating, and
7. Name and address of each customer on whose premises the meter has been in service with date of installation and removal.

(c) These records shall also contain condensed information concerning all tests and adjustments including dates and general results of the adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test re-

quired by the applicable commission administrative regulation.

(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to the commission's administrative regulations, a utility shall affix to the meter a suitable seal in a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 19. Request Tests. (1) A utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022 Section 8(3)(a)(1), 807 KAR 5:022 Section 8(3)(b)(1), 807 KAR 5:041 Section 17(1) or 807 KAR 5:066 Section 15(4), the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff. The utility shall maintain any meter removed from service for testing, in a secure location under the utility's control, for a period of **six (6) months[one year]** from the date the customer is notified of the finding of the investigation **and the time frame the meter will be secured by the utility** or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. The request shall not be made more frequently on one (1) meter than once each twelve (12) months. Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of **six (6) months[one year]** from the date the customer is notified of the finding of the investigation **and the time frame the meter will be secured by the commission's Meter Standards Laboratory** or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property **[when service is to be terminated]**. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.

Section 21. Pole Identification. (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. **The map or maps should be [if the maps are] available preferably in electronic format, they shall be filed as a PDF file or as a digital geographic database [commission-readable geographic information system (GIS) file. Maps generated on and after the effective date of this regulation shall be filed as a PDF file and as a commission-readable geographic information system (GIS) file].** The following data shall be available on the map or maps:

- (a) Operating districts.
- (b) Rate districts.
- (c) Communities served.
- (d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable **digital data [means]** may be used. The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database. For all **prospective** construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by the commission's administrative regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees; [.]

(2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the acceptable standards listed in 807 KAR 5:041 Section 3; [.]

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of its facilities and compliance with the commission's rules and administrative regulations and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at any utility facility, the utility shall inspect all portions of the system which are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, deficiencies found and action taken to correct the

deficiencies.

(4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for any evidence of abnormality; [.]

2. Transmission switching stations where the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges monitoring devices; [.]

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature and overloading; [.]

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, **[or]** deterioration and vegetation management consistent with the utility's vegetation management practices.

(c) In addition to the requirements set out in subsection 4(b) of this section, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors and supporting facilities shall be inspected from the ground for damage, deterioration and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure; or

2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other non-wood material.

(d) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected; [.]

2. Distribution substations with primary voltage of fifteen (15) to sixty-nine (69) KV.

(e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors and supporting facilities from the ground for damage, deterioration and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows: [.]

1. Utility buildings shall be inspected for compliance with safety codes at least annually; [.]

2. Construction equipment shall be inspected for defects, wear and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the sole basis for evidence of compliance with the commission's administrative regulations.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals are prescribed for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, includ-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

ing their exterior components;[.]

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults;[.]

c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, meters using remote reading technology shall be manually inspected and visually examined for proper working condition and **the meter registration recorded/readings verified**.

3. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually;[.]

b. Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with the commission's administrative regulations.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, meters, meter settings and valves.

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility's vegetation management practices and climbing safety every two (2) years.

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually.

(e) The utility shall inspect construction equipment for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out in 807 KAR 5:071 to ensure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than is set out in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:

(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or (c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, may, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others; March 2007;

2. Annual Reporting Form for Rural Electric Cooperative Corporations; July 2012;

3. FERC Form 2 – Annual Report of Major Natural Gas Companies; December 2007;

4. Annual Reporting Form for Class C and D Gas Utilities; August 2005;

5. Annual Reporting Form for Local Exchange Carriers; August 2005;

6. Annual Reporting Form for Local Exchange Carriers – Kentucky Operations Only; August 2004;

7. Annual Reporting Form for Water Company – Class A & B; July 2012;

8. Annual Reporting Form for Water Company – Class C; July 2012;

9. Annual Reporting Form for Water Districts/Water Associations – Class A & B; July 2012;

10. Annual Reporting Form for Water Districts/Water Associations – Class C; July 2012;

11. Annual Reporting Form for Sewer Utilities; September 2005;

(b) Quarterly Meter Reports:

1. Quarterly Meter Report-Electric; August 2011;

2. Quarterly Meter Report-Water; July 2012;

3. Quarterly Meter Report-Gas; July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. Water Utility-Non-Payment Disconnection/Reconnection Report; February 2012;

2. Electric Utility-Non-Payment Disconnection/Reconnection Report; September 2000;

3. Gas Utility Non-Payment Disconnection/Reconnection Report; September 2000;

(d) Application for Appointment of Meter Tester.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/>[Section 1. Definitions. (1) "Utility" means a utility as defined in KRS 278.010(3).

(2) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.

Section 2. General Provisions. (1) The adoption of administrative regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No administrative regulation of the

commission shall in any way relieve a utility from any of its duties under the laws of Kentucky.

(2) Any reference to standards or codes in commission administrative regulations shall not prohibit utilities employing competent engineers from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. This report shall be based upon the accounts set up in conformity with the uniform system of accounts for utilities. This report shall be filed on or before March 31, each year, for the preceding calendar year. The forms for this report are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time. For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every gas, electric and water utility shall make periodic reports on forms prescribed by the commission, of meter tests, number of customers and amount of refunds. These forms are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(3) Report of terminations for nonpayment of bills. Each electric and gas utility shall, report annually the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(4) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(5) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.

(6) Transmittal letter. All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each type, class and character of service available at his location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.

(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.

Section 6. Billings, Meter Readings and Information. (1) Information on bills. Each bill for utility service issued periodically by a utility shall clearly show the following, if applicable: class of service; present and last preceding meter readings; date of the present reading; number of units consumed; meter constant, if any; net

amount for service rendered; all taxes; any adjustments; and the gross amount of the bill. The date after which a penalty may apply to the gross amount shall be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing it on the bill.

(b) By publishing it in a newspaper of general circulation once each year.

(c) By mailing it to each customer once each year.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly set out the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading. Each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly, except that each utility using customer-read meter information shall read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to commission staff and any customer requesting this information. If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 7. Deposits. (1) Determination of deposits. A utility may require from any customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 15 of this administrative regulation. The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class. The amount of a cash deposit shall be determined by one (1) of the following methods:

(a) Calculated deposits. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.

(b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.

(c) Recalculation of deposits. If the utility will or may retain either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit will be recalculated every eighteen (18) months based on actual usage of the customer. The notice of deposit recalculation shall be included either on the customer's application for service or on the receipt of deposit, or may be included annually with or on customer bills. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, then the utility shall refund any over-collection and may collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation.

(2) Waiver of deposits. Deposits may be waived at the discre-

tion of the utility in accordance with its currently effective tariff based upon a customer's showing of satisfactory credit and payment history.

(3) Additional deposit requirement. If a deposit has been waived, as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's currently effective tariff, the utility may require that a deposit be made. If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(c) of this section.

(4) Receipt of deposit. The utility shall issue to every customer from whom a deposit is collected a receipt of deposit. The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit. If the notice of recalculation described in subsection (1)(c) of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification. If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as otherwise provided by Section 15 of this administrative regulation, customer service may be refused or discontinued pursuant to Section 14 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits. Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date. All interest that has accrued as of the effective date of this administrative regulation shall be refunded or credited to the customer's bill on the first anniversary of the deposit date after the effective date of this administrative regulation. If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, the payment or credit shall be on a prorated basis. Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Tariff requirements. Each utility which chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining when a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable;

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 8. Special Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred which would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) Special charges shall be included in the utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) Special charges may include, but are not limited to:

(a) Turn-on charge. A turn-on charge may be assessed for a new service turn-on, seasonal turn-on or temporary service. A turn-on charge shall not be made for initial installation of service where a tap fee is applicable.

(b) Reconnect charge. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or commission administrative regulations. Customers qualifying for service reconnection under Section 15 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge. A charge may be assessed when a utility representative makes a trip to the premises of a customer for the purpose of terminating service. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the customer pays the delinquent bill to avoid termination. The charge may also be made if the utility representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The utility may make a field collection charge only once in any billing period.

(d) Special meter reading charge. This charge may be assessed when a customer requests that a meter be reread, and the second reading shows the original reading was correct. No charge shall be assessed if the original reading was incorrect. This charge may also be assessed when a customer who reads his own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 18 of this administrative regulation, and the tests show the meter is not more than two (2) percent fast. No charge shall be made if the test shows the meter is more than two (2) percent fast.

(g) Returned check charge. A returned check charge may be assessed if a check accepted for payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment penalty. A penalty may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The penalty may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.

Section 9. Customer Complaints to the Utility. Upon complaint to the utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the complainant of its findings. The utility shall keep a record of all written complaints concerning its service. This record shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition of the complaint. Records shall be maintained for two (2) years from the date of resolution of the complaint. If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the complainant of his right to file a complaint with the commission, and shall provide him with the address and telephone number of the commission. If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission.

Section 10. Bill Adjustment for Gas, Electric and Water Utilities.

(1) If upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission administrative regulations applicable to the type of meter involved.

(2) If test results on a customer's meter show an average error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall immediately determine the period during which the error has existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer. The utility shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot

be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for the customer. If that data is not available, the average usage of similar customer loads shall be used for comparison purposes in calculating the time period. If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue. In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after final meter test results. A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage. Each utility shall monitor customers' usage at least annually according to procedures which shall be included in its tariff on file with the commission. The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow.

(4) Usage investigation. If the utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, 19____, the meter bearing identification No. _____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test.

Based upon this we herewith _____ (charge or credit) with the sum of \$ _____, which amount has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you must notify this office in writing within seven (7) days of the date of this notice.

(6) Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as a customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.

Section 11. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 10 of this administrative regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.

Section 12. Customer's Request for Termination of Service. (1) Any customer desiring service terminated or changed from one address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff.

(3) Any utility desiring to establish a termination or reconnection charge under the provisions of subsection (2) of this section, shall apply for commission approval of such charge in accordance

with the provisions of 807 KAR 5:011, Section 10.

Section 13. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers.

(a) Available telephone numbers. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of the commission's administrative regulations regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each major gas or electric utility (as defined by the Uniform System of Accounts) and each water and sewer utility having annual operating revenues of \$250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding holidays.

2. Each nonmajor gas or electric utility (as defined by the Uniform System of Accounts) and each water or sewer utility having annual operating revenues of less than \$250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each previously defined nonmajor utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week.

(c) Display of customer rights. Each utility shall prominently display in each office in which payment is received a summary, to be prepared and provided by the commission, of the customer's rights under this section and Section 15 of this administrative regulation. If a customer indicates to any utility personnel that he is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for explanation of the customer's rights.

(d) Utility personnel training. The chief operating officer of each electric and gas utility providing service to residential customers shall be required to certify each year the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section. Training is hereby defined as an annual review of commission administrative regulations and policies regarding winter hardship and disconnect administrative regulations, Cabinet for Health and Family Services policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies. Certification is defined as written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 14 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 14 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for gas and electric utilities. Each gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under such plans, utilities shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end

of the twelve (12) month period or through a series of leveled adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers but may be extended to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of such budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 14(3) and 15 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. Such plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of the meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to any customer until any defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 15 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours, and shall install and connect new service within seventy-two (72) hours, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and commission administrative regulations have been met.

(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this administrative regulation.

Section 14. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or commission administrative regulations. A utility may terminate service for failure to comply with applicable tariffed rules or commission administrative regulations pertaining to that service. However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or commission administrative regulations without first having made a reasonable effort to obtain customer compliance. After such effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days' written termination notice pursuant to Section 13(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal. Such notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, oper-

ation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 15 of this administrative regulation, a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished or other tariffed charges until that customer has paid his indebtedness.

(e) For noncompliance with state, local or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal or other codes, rules and administrative regulations applying to such service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 13(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill. The termination notice to residential customers shall include written notification to the customer of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Department for Social Insurance of the Cabinet for Health and Family Services to contact for possible assistance.

2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.

(2) A utility shall not terminate service to a customer if the following conditions exist:

(a) If payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service, there is delivered to the utility office payment of the amount in arrears, service shall not be terminated.

(b) If a payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 13 of this administrative regulation and the customer is meeting the requirements of the plan.

(c) If a medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity on the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 13 of this administrative regulation. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Human Resources (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents such certificate to the utility. Customers eligible for such certification from the Cabinet for Human Resources shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 13 of this administrative regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Kentucky Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 15. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 13(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 14(1)(f) of this administrative regulation prior to application for reconnection, and who applies for such reconnection during the months from November through March if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services, Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or \$200, whichever is less; and

(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, the customer has an outstanding bill in excess of \$600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.

(2) Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Health and Family Services, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need under this administrative regulation shall agree to accept

referral to and utilize weatherization services which are administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.

(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.

Section 16. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for use by any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type and serial number of standards used to make the checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by commission administrative regulations.

(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers", and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him to perform meter tests. This form is hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, on Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 17. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: Information to identify the unit and its location; date of tests; reason for such tests; readings before and after test; statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed; notations showing that all required checks have been made; statement of repairs made, if any; identifying number of the meter; type and capacity of the meter; and the meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. Each utility shall keep numerically arranged and properly classified records for each meter owned, used and inventoried by the utility. The identification number, date of purchase, name of manufacturer, serial number, type, rating, and name and address of each customer on whose premises the meter has been in service with date of installation and removal shall be included in the records. These records shall also contain condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall reflect the date of the last test and indicate the proper date for the

next periodic test required by the applicable commission administrative regulation.

(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to commission administrative regulations, the utility shall affix to the meter a suitable seal in such a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 18. Request Tests. (1) Each utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff.

(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. Such request shall not be made more frequently on one (1) meter than once each twelve (12) months.

Section 19. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.

Section 20. Pole Identification. (1) Each utility owning poles or other structures supporting its wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure can be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 21. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 22. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

- (a) Operating districts.
- (b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps, a card record or other suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 23. Location of Records. All records required by commission administrative regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.

Section 24. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees.

(2) Instruct employees in safe methods of performing their work

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 25. Inspection of Systems. (1) Each utility shall adopt inspection procedures to assure safe and adequate operation of its facilities and compliance with commission rules and administrative regulations. These procedures shall be filed with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at any utility facility made by a qualified employee, public official, or customer, the utility shall inspect all portions of the system which are the subject of the report.

(3) Appropriate records shall be kept by each utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.

(4) Electric utility inspection. Each electric utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for any evidence of abnormality.

2. Substations where the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges monitoring devices.

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature and overloading.

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage or deterioration (c) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.

2. Substations with primary voltage of fifteen (15) to sixty-eight (68) KV.

(d) At intervals not to exceed two (2) years, the utility shall inspect electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities.

(e) The utility shall inspect other facilities as follows.

1. Utility buildings shall be inspected for compliance with safety codes at least annually.

2. Construction equipment shall be inspected for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(5) Gas utility inspection. Each gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals are prescribed for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in such code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, including their exterior components.

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults.

c. Accessibility of the curb box and valve on a service line.

2. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually.

b. Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, and valves.

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric facilities, and climbing safety every two (2) years.

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities and safe working con-

ditions at least annually.

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually.

(e) The utility shall inspect construction equipment for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set out below for the various types of inspections, or as otherwise required in 807 KAR 5:074.

(a) The utility shall annually inspect collecting sewers and manholes on a scheduled basis unless conditions warrant more frequent inspections.

(b) The utility shall weekly inspect all mechanical equipment unless otherwise authorized by the commission.

Section 26. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:

(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 27. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: October 12, 2012

FILED WITH LRC: October 12, 2012 at noon

CONTACT PERSON: Gerald E. Wuetchers, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes general rules related to the provision of service and furnishing of commodities by electric, gas, water, sewage and telephone utilities.

(b) The necessity of this administrative regulation: This administrative regulation establishes general rules related to the delivery of service and furnishing of commodities by electric, gas, water, sewage and telephone utilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 278.280(2), the commission is required to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by a utility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance as to the general rules of the commission. The amendments to the administrative regulation will clarify issues with the general rules of the commission. The amendments will assist in the effective implementation of

the statutes by ensuring that electric utilities undertake regularly scheduled, ground-line inspections of their electrical lines operating at or above 69 kilovolts (KV) and their support structures, including poles, H-frame supports, and lattice tower structures. During the commission's regular inspections it has become aware that not all electric utilities inspect all of their electrical lines and support structures from the ground on a regular inspection cycle. In reliance on the language found in 807 KAR 5:006, Section 25(4)(f), that "aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations," some utilities have not been doing ground inspections of some of the electrical line circuits on their systems. Instead, those utilities have been performing only aerial inspections of those portions of their systems. Since they are doing ground inspections on the other portions of their systems, they believe that practice conforms to the language of the regulation. The commission believes that the language of the regulation, as written, is somewhat ambiguous as to how often an electric utility must inspect its electric lines and support structures from the ground. However, the commission does not believe the intent of the regulation is to allow utilities to inspect some portions of their systems using aerial inspections only, so long as they do ground inspections of other portions of their systems. The commission's electrical inspectors have demonstrable evidence that a failure to inspect all electrical facilities from the ground on a regular inspection schedule can lead to unsafe conditions in which very large transmission line support structures can be in danger of collapsing from unmanaged vegetation undergrowth. Therefore, the commission is proposing this amendment to 807 KAR 5:006, in order to clarify that all electric lines must be inspected from the ground on a regular schedule.

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

(a) How the amendment will change this existing administrative regulation: The amendments after comments to 807 KAR 5:006 will clarify the documentation needed for inspections, the requirements for partial payment plans and the filing of GIS information. The amendments also provides a lesser time period for the retention of meters that have tested outside the accuracy range but adds the requirement of notifying the customer how long the meter will be retained. One amendment also addresses the situation where there are multiple tenants in a building but service is in the name of the building owner only. Also, the amendments clarify the utility's access to property.

(b) The necessity of the amendment to this administrative regulation: Without adding language to clarify these sections, confusion would exist on what is required by the utilities on inspections and partial payment plans. There could also be an issue with storage space if required to retain the non-accurate meters for a longer period of time. There would also be confusion as to the utility's access to property, the GIS filing requirements and multiple tenant situations.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 278.040(3) the commission is authorized to adopt reasonable regulations to implement the provisions of KRS Chapter 278. Pursuant to KRS 278.280(2), the commission is required to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. Pursuant to KRS 278.042 the commission is required to ensure that all electric utilities construct and maintain their facilities in accordance with the most recent edition of the NESC. The amended regulation will help ensure that electric utilities are inspecting all of their electric lines and support facilities properly and regularly, which will help ensure that they are providing reliable service to their customers. The amended regulation will also ensure that utilities are properly offering partial payment plans to customers and are retaining inaccurate meters for a period long enough for the customers to have a chance to have the meter tested by the Meter Standards Laboratory or to file a formal complaint.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will assist in the effective implementation of the statutes by ensuring that the utilities are undertaking regular ground inspections of their facilities down to the point of service. It also provides more guid-

ance on the use of partial payment plans and the right to terminate for not complying with partial payment plans.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all electric utilities, gas utilities, water utilities and telephone utilities under 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: The proposed administrative regulation amendment will impact two electric utility companies, which do not currently inspect all of their electric lines operating at or above 69 KV and their support facilities from the ground. Those utilities will have to undertake additional ground-line inspections of their electric lines and support facilities pursuant to the schedule provided in the proposed amendment. All other electric utilities already undertake ground-line inspection of all of their electric lines and support structures using an inspection schedule at least as stringent as the proposed amendment language. Some utilities utilize a more frequent inspection schedule, and it is expected that those utilities will continue to use an inspection schedule that best fits the needs of their systems. The proposed amendment to the regulation will affect all telephone utilities, but the impact is expected to be minimal. Most telephone utilities already look for proper vegetation management and proper clearances of both electrical and non-electrical facilities during their inspections. Gas and water utilities will have to begin documenting inspections to the point of service better. The amendment will help the commission in its efforts to get the few utilities which do not yet include these items in their inspection practices to do so, in order to improve reliability.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is expected that the two electric utilities that do not currently inspect all of their electric lines and support structures from the ground will have to expend some money to add in those ground inspections. However, under the current regulation the commission believes the utilities should already be conducting the ground inspections and the amendment is only clarifying that requirement. Also, the utilities are currently required to inspect their facilities down to the meters. The amendment requiring the utilities to record the meter registration on meters using remote read technology is tied to the inspection intervals in which the utilities are already supposed to be inspecting to the meters, therefore it should not add a significant cost to verify the reading is correct or that the display is actually working. It is not expected that the amendments will not have any but a de minimis impact on affected telephone utilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The utilities will have certainty with regard to what documents to file, accuracy requirements and how they should conduct their system inspections and will be more likely to discover improper meters or unsafe conditions and correct them before they cause injury or outages.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

(b) On a continuing basis: No additional costs are expected, although the utilities state it will cost them money to comply.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No additional funding is required.

(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 funding increase is necessary.

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

or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not used in this proposed amendment. This amendment applies equally to all electric utilities, gas utilities and telephone utilities, because there is no rational need to provide for different schedules of electrical system inspections for the owner/operators of electric transmission systems and no need for different requirements for the inspection of telephone aerial facilities. The need to conduct ground-line inspections of electric lines and their support facilities and telephone facilities is due to the effects of time, weather, and the environment on those materials, and every utility is required to provide reliable service to its customers. Without conducting regularly scheduled inspections of their electric lines and poles—both from the air and from the ground—electric utilities will not be able to identify potential trouble spots and correct them before they cause outages or injury. Similarly, without inspecting all relevant facility clearances and vegetation management practices on their utility poles, telephone utilities will not be able to identify potential trouble spots and outage causes. Therefore, tiering principles do not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 49 U.S.C. § 60105; KRS 278.040; KRS 278.042; KRS 278.140; KRS 278.160; KRS 278.190; KRS 278.210; KRS 278.220; KRS 278.230; KRS 278.250; KRS 278.255; KRS 278.495; KRS 278.542

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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's costs. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct the review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's costs. The Public Service Commission will be performing the same level of review and require the same number of employees.

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:

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

807 KAR 5:011. Tariffs.

RELATES TO: KRS[Chapter] 278.010, 278.030, 278.160, 278.170, 278.180, 278.185, 278.190.

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires[provides that] the commission to promulgate an administrative regulation to establish requirements for each utility to[shall prescribe rules under which each utility shall] file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Nonrecurring charge" means a charge or fee assessed to customers to recover the specific cost of an activity, which:

(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges shall not be incurred; and

(b) Is limited to only recover the specific cost of the specific service.

(4) "Person" is defined by KRS 278.010(2).

(5) "Rate" is defined by KRS 278.010(12).

(6) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(7) "Signature" means an original signature or an electronic signature as defined by KRS 369.102(8).

(8) "Statutory notice" means notice made in accordance with KRS 278.180.

(9) "Tariff" means a utility's schedule of each of its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.

(10) "Utility" is defined by KRS 278.010(3).

(11) "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

Section 2. General. (1) Beginning January 1, 2013, each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal/.

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of its current tariff for public inspection in the utility's office or place of business.

(5) A utility that operates a public Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of its current tariff for each type of service that it provides; or

(b) Place on its Web site a hyperlink to the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1 or reasonable facsimile, shall be used as the tariff's cover

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

page, and shall contain:

(a) The utility's name, mailing address, street address of its principal office, if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of each type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 or reasonable facsimile and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number; (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____, Dated _____, 20____".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix its stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, it shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) A utility may indicate the applicability of a schedule by reference to the index sheet with language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. _____ for applicability."

(2) The following information shall be shown in each rate schedule under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classes of customers affected, including residential, commercial, and other groups of customers;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount **or reference the tariff section containing the amount**;

(f) Term: if contracts are made for certain periods, give the length of the term; and

(g) Special rules: list any special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or class of service available under the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. _____"; or

(b) A group of letters, with the designation indicative of the type or class of service for which the rate schedule is available. The

format for use of a group of letters shall be in the format "Tariff R.S." indicating that the rate schedule states residential service rates.

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) Each document shall be submitted in portable document format ("PDF") and be capable of viewing with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements specified in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) No tariff, tariff sheet, or tariff provision may be changed, cancelled or withdrawn except as provided by Sections 6 and 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect:

(a) By order of the commission; or

(b) By issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public **in accordance with Section 8 of this administrative regulation** and statutory notice to the commission.

(3) Each revised tariff sheet shall contain one (1) of the following symbols in the margin indicating the change made:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff setting out:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notices. A utility shall give notice to the public as required by this section **if a charge or fee is changed, revised, or initiated or a condition of service or a rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.**

(1) Public postings.

(a) A utility shall post at its place of business a copy of the required notice no later than the date the filing is made with the commission. The notice shall not be removed until the filing has become effective; and

(b) A utility that maintains a public Web site shall, within two (2) business days of filing, post a copy of the public notice as well as a hyperlink to its filing on the commission's Web site. The notice shall not be removed until the filing has become effective or the commission issues a final decision on the filing.

(2) Manner of notification.

(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall mail written notice in accordance with subsection (3) of this section to each customer no later than the date on which the filing is submitted to the commission.

(b) If the utility has more than twenty (20) customers and is not

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

a sewage utility, it shall:

1. Include notice with customer bills mailed by the date the filing is submitted;

2. Publish notice in a trade publication or newsletter going to all customers by the date the filing is submitted; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the filing is submitted.

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Notice requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that any ~~corporation, association, or~~ person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that sets forth the grounds for the request including the status and interest of the party;

(f) A statement that any person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; ~~and~~

(g) A statement that this filing and related documents are available on the Public Service Commission's Web site at <http://psc.ky.gov>; and

(h) A statement that written comments regarding the proposed rate may be submitted to the Public Service Commission by mail or through the Public Service Commission's Web site.

(4) Proof of notice. A utility shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If its notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) A new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was given to the **public in accordance with Section 8 of this administrative regulation and the commis-**

sion[and the public]; and

(b) The tariff is not suspended by an order of the commission pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate revision. If the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor, the statutory notice to the commission shall not commence to run and shall not be computed until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. Notwithstanding 807 KAR 5:001, a utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9 of this administrative regulation.

(1) Each requested rate revision shall be accompanied by:

(a) A specific cost justification for the proposed rates;

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed changes were not included in the most recent general rate case, and why current conditions prevent deferring the proposed changes until the next general rate case;

(d) A statement identifying the group of potential or existing customers affected by the rate revision; and

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the additional revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent twelve (12) month period, the utility shall, in addition to the information set out in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent general rate case.

(c) As part of the absorption test, any general rate increase received during the twelve (12) month period shall be annualized.

(4) When the utility submits its filing to the commission, it shall transmit by electronic mail an electronic copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make its own the former operating utility's rates, classifications and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that:

1. Sets out the rates and requirements of the predecessor utility then in effect and adopted by it; or

2. Sets out the rates and requirements it proposes to place into effect for the predecessor utility;

(b) New additional pages or revised current pages of its existing tariffs that:

1. Set out the rates and requirements of the predecessor utility then in effect and adopted by it; or

2. Set out the rates and requirements it proposes to place into effect for the predecessor utility.

(7)(a) If a new tariff or revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the tariff or revised sheet of an existing tariff may be filed without notice.

(b) If a new tariff or revised sheet of an existing tariff states any change in the effect of the rates or requirements of the predecessor utility, the new tariff or revised sheet of an existing tariff shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;

(c) A copy of the Kentucky Revised Statutes applicable to the utility; and

(d)(e) A copy of the administrative regulations governing the utility.

(3) The information required in subsection (2) of this section shall be made available in an electronic or non-electronic format.

Section 13. Special Contracts. Each utility shall file a copy of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation in accordance with the procedures established in 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown and upon application to and approval by the commission, deviations from the rules in this administrative regulation may be permitted.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tariff Form-1", July 2012;

(b) "Tariff Form-2", July 2012; and

(c) "Tariff Form-3", July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>. [Section 1. Definitions. For purpose of this administrative regulation: "Commission" means the Public Service Commission.

Section 2. General. All utilities under the jurisdiction of the

commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and administrative regulations, the utility's office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be eight and one-half (8 1/2) by eleven (11) inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.

(b) Statement of kind of service offered.

(c) General statement of territory served.

(d) Date of issue and date tariff is to become effective.

(e) Signature of the officer of the utility authorized to issue tariffs.

(f) Identifying designation in the upper right-hand corner as required by Section 5 of this administrative regulation.

(5) The second and succeeding pages shall contain:

(a) All the rules and administrative regulations of the utility.

(b) Rate schedules showing all rates and charges for the several classes of service.

(c) Signature of the officer of the utility authorized to issue tariffs.

(d) Date of issue and date tariff is to become effective.

(e) Identifying designation in upper right-hand corner as required by Section 5 of this administrative regulation.

(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:

(a) Applicable: show territory covered by tariff.

(b) Availability of service: show classes of customers affected, such as domestic, commercial, etc.

(c) Rates: list all rates covered by tariff.

(d) Minimum charge: state amount of charge and quantity allowed.

(e) Delayed payment charge: state if penalty or discount.

(f) Term: if contracts are made for certain periods, give length of term.

(g) Special rules: if any special rules and administrative regulations are in effect covering this tariff, list same hereunder.

(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of _____, or see Tariff Sheet No. 2B for applicability.)

(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)

(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the

designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)

(4)(a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.

(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.

(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.

(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this administrative regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.

Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation.

(2)(a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:

(C) To signify changed administrative regulation.

(D) To signify discontinued rate, administrative regulation or test.

(I) To signify increase.

(N) To signify new rate and/or new test.

(R) To signify reduction.

(T) To signify a change in text.

(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.

(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.

(3) New tariffs stating changes in a provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.

(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.

(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. Such revisions must be identified as required herein.

Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and administrative regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No. _____ dated _____, 19____."

Section 8. Notices. Notices shall be given by the utility in the following manner:

(1) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than \$1,000,000 shall notify the commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.

(2) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at their place of business and, in addition, notice thereof:

(a) Shall be included with customer billings made on or before the application is filed with the commission; or

(b) Shall be published by such date in a trade publication or newsletter going to all customers; or

(c) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in their service area, the first publication to be made prior to the filing of the application with the commission. Each such notice shall contain the following language:

The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.

(3) Notice as to intervention. The notice made in compliance with subsection (2) of this section shall include a statement to the effect:

(a) That any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene;

(b) That the motion shall be submitted to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and

(c) That intervenors may obtain copies of the application and testimony by contacting the applicant at a name and address to be stated in the notice. A copy of the application and testimony shall be available for public inspection at the utility's offices.

(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) or (b) of this section and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.

(5) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.

(6) Extensions of time. Applications for extensions of time shall be made to the commission in writing and will be granted only upon a showing of compelling reason.

Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any pro-

posed revisions in rates or administrative regulations, and the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.

Section 10. Nonrecurring Charges. Nonrecurring charges are charges to customers due to a specific request for certain types of service activity for which, when the activity is completed, no additional charges may be incurred. Such charges are intended to be limited in nature and to recover the specific cost of the activity. Nonrecurring charges include reconnection charges, late payment fees, service order changes and hook-on or tap fees. This section allows a utility to seek a rate revision for a nonrecurring charge outside a general rate proceeding. In addition to the specific information required pursuant to the above sections, the following information must be submitted to the commission when a utility makes a filing to increase miscellaneous or nonrecurring service charges outside a general rate case:

(1) Each requested rate revision must be accompanied by:

(a) A specific cost justification for the proposed rates and a full description of the equipment or service provided under tariff (807 KAR 5:001, Section 6(2)(c)). The proposed rates should at least cover incremental costs, and a reasonable contribution to overhead. Incremental costs are defined as those costs which would be specifically incurred in the provision of this service.

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation. In addition to the notice requirements contained in Section 8 of this administrative regulation, the utility shall also mail a copy of its filing to the Attorney General's Consumer Protection Division. The Attorney General will then have ten (10) days to notify the commission in writing if it requests a hearing in a particular case.

(c) A detailed statement explaining why the proposed changes could not have been included in the most previous general rate case, and why current conditions prevent deferring the proposed changes until the next general rate request.

(d) An impact statement identifying the group of customers affected by the proposed tariff. The impact statement shall identify potential as well as existing customers.

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period.

(2) If the additional revenue to be generated from the proposed tariff revisions exceeds by five (5) percent the total revenues provided by all miscellaneous and nonrecurring charges for a recent twelve (12) month period, the utility must file, in addition to the information set out in subsection (1)(a) of this section, the following: An absorption test showing that the additional net income generated by the tariff filing will not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent rate case. Any general rate increases received during the twelve (12) month period must be annualized. Any significant cost changes may be included but must be documented as part of the filing.

(3) No more than two (2) such tariff filings under this procedure shall be made between general rate cases. Additional tariff filings for nonrecurring charges will be processed according to general rate case procedures.

When these requirements are met, such a filing may be made by letter with supporting documentation and will not require the information normally required pursuant to the commission's general rate case administrative regulation, 807 KAR 5:001, Section 9.

Section 11. Change of Ownership; Adoption notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and administrative regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making

its own all rates, rules, classifications and administrative regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 5 of this administrative regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and administrative regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and administrative regulations of the predecessor utility then in effect and adopted by it, or such other rates and administrative regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No. 11, also cancels Public Service Commission Adoption notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and administrative regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and administrative regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and administrative regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.

(2) Copies of the Kentucky Revised Statutes applicable to the utility.

(3) A copy of the administrative regulations governing such utility adopted by the commission.

(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and administrative regulations and statutes are kept there for public inspection.

Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation applicable to tariffs containing rates, rules and administrative regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 14. Deviations from Rules. In special cases, for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

Section 15. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

- (1) Form of cover sheet for tariffs.
- (2) Form for filing rules and administrative regulations.
- (3) Form for filing rate schedules.
- (4) Form of certificate of notice to the public of change in tariff where no increase of charges results.
- (5) Form of certificate of notice to the public of change in tariff which results in increased charges.
- (6) Form of adoption notice.

FORM OF COVER SHEET FOR TARIFFS

P.S.C. NO. _____

CANCELS P.S.C. NO. _____

(NAME OF COMPANY)

(LOCATION OF COMPANY)

Rates, Rules and Administrative Regulations for Furnishing

(SERVICE RENDERED)

at

(LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION
OF KENTUCKY

Issued _____, 19____ Effective _____, 19____

Issued by: (Name of Utility)

By:

FORM FOR FILING RULES &
ADMINISTRATIVE REGULATIONS

(Page 2 of Tariff)

Name of Utility:

RULES & ADMINISTRATIVE REGULATIONS

Date of Issue:

Effective Date:

Issued by:

Name:

Title:

FORM FOR FILING RATE SCHEDULES

(Page 3 of Tariff)

For: (Community, Town or City)

P.S.C. NO.:

____ (Original) Sheet No. _____

____ (Revised)

Name of Issuing Corporation:

Cancelling P.S.C. No.:

____ (Original) Sheet No. _____

____ (Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)

AVAILABILITY OF: (Show classes of customers affected,

SERVICE: such as domestic, commercial, etc.)

RATES: (List all rates covered by tariff.)

MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE: (Month, Day, Year)

DATE EFFECTIVE: (Month, Day, Year)

ISSUED BY: (Name of Officer, Title, Address)

ISSUED BY AUTHORITY OF P.S.C. ORDER NO.:

FORM OF CERTIFICATE OF NOTICE TO THE
PUBLIC OF CHANGE IN TARIFF WHERE NO
INCREASE OF CHARGES RESULTS
(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing (Kind of Service) _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19____, issued *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____, to become effective _____, 19____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the _____ day of _____, 19____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.

Given under my hand this _____ day of _____, 19____.

Address:

*If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as _____ Revision of Original Sheet No. _____ P.S.C. No. _____, cancelling _____ P.S.C. Adoption notice No. _____.

FORM OF CERTIFICATE OF NOTICE TO THE
PUBLIC OF CHANGE IN TARIFF WHICH
RESULTS IN INCREASED RATES
(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19____, issued its *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____ to become effective _____, 19____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

*On the _____ day of _____, 19____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

**On the _____ day of _____, 19____, typewritten or printed notice of the proposed rates or administrative regulations was mailed to each of the _____ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this _____ day of _____, 19____.

Address:

*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as _____ Revision of Original Sheet No. _____ P.S.C. No. _____, or Original Sheet No. _____ P.S.C. No. _____ cancelling _____ P.S.C. Adoption notice No. _____.

**If Notice is given by publication as provided in Section 8, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the _____ day of _____, 19____, there was delivered to the _____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or administrative regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

accordance with Section 9(2), of said administrative regulation.

FORM OF ADOPTION NOTICE P.S.C. Adoption notice No. _____ ADOPTION NOTICE

The undersigned (Name of Utility) _____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and administrative regulations for furnishing (Nature of Service) _____ service at _____ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) _____ of _____, and in effect on the _____ day of _____, 19____, the date on which the public service business of the said (Name of Predecessor) _____ was taken over by it.

This notice is issued on the _____ day of _____, 19____, in conformity with Section 10 of P.S.C. Tariff administrative regulations adopted by the Public Service Commission.

By:]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: October 12, 2012

FILED WITH LRC: October 12, 2012 at noon

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for a utility to file its tariff or to file revisions to its existing tariff.

(b) The necessity of this administrative regulation: This regulation provides the structural framework for using electronic filing procedures that should reduce filing expenses for a utility as well as allow a utility to submit and receive documents in a timelier manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.160 provides that the commission shall prescribe rules under which a utility shall file schedules showing all rates and conditions of service it has established and that it collects or enforces.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and timely means for a utility to submit required documents to the Public Service Commission.

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

(a) How the amendment will change this existing administrative regulation: The amendments make modest revisions to the original version of the proposed regulation. It clarifies when a utility must provide notice of a proposed tariff change and the efforts that a utility must make to inform its customers and the public as to the effect of its proposed tariff revisions. It further revises the contents of the required notice to inform the public that comments regarding the proposed tariff revisions can be submitted to the Commission.

(b) The necessity of the amendment to this administrative regulation: Proposed amendments reduce the need for unnecessary public notice of minor tariff revisions that will not materially affect utility customers and ensures that utilities do not incur costs that produce no meaningful benefit for its customers. It further refines the efforts that a utility must make to ensure its customers have access to documents related to the utility's proposed tariff revisions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only

rates that are filed with the Public Service Commission. KRS 278.180 specifies the process for initial review by the Public Service Commission and allows the Public Service Commission to establish rules for notice of proposed revisions in utility rates.

(d) How the amendment will assist in the effective administration of the statutes: By ensuring effective public notice, the proposed amendments will ensure greater public involvement in Public Service Commission proceedings and enable the Public Service Commission to ascertain and address the concerns of the public. It will also ensure a more informed public and reduce misunderstanding that could delay Public Service Commission review or require the initiation of unnecessary proceedings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all jurisdictional utilities that are required to file tariffs with the Public Service Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require a utility to have access to a computer, scanner and internet connection. Nearly every utility meets this requirement and those that do not may request a deviation from this regulation to allow it to submit filings in a paper medium.

(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 to comply. The utilities without means to file tariffs electronically may continue to use the current filing procedures by requesting a deviation from this regulation to allow it to submit filings in a paper medium resulting in costs no greater than what is currently required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For a utility that electronically files its tariffs this amendment will reduce the number of documents that must be filed and allows for the use of electronic transmission of documents in lieu of service of paper documents which should result in reduced costs for filing tariffs. The amendment will also provide for a timelier manner for a utility to submit a tariff filing to the Public Service Commission. The proposed amendment generally reflects ad hoc practices with which the Public Service Commission has employed over several years and which it found improved the filing process resulting in a favorable response from utilities.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(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 or will be required.

(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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules show-

ing all rates and conditions established by it and collected or enforced.

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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing tariffs due to the reduced number of required documents. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing tariffs due to the reduced number of required documents. The exact amount of any savings is too difficult to quantify.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amended After Comments)

907 KAR 14:005. Health Care-Acquired Conditions and Other Provider Preventable Conditions.

RELATES TO: KRS 205.560

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. 447.26, 42 U.S.C. 1396a Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act

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 to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program policies, including managed care and non-managed care, regarding health care-acquired conditions and provider preventable conditions.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Health care-acquired condition" is defined by 42 C.F.R. 447.26.

(3) "In writing" means on paper or by electronic means.

(4) "Inpatient hospital" means an acute care hospital, critical access hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, psychiatric distinct part unit in an acute care hospital, or rehabilitation distinct part unit in an acute care hospital.

(5) "Managed care organization" means an entity for which the Department for

Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) [(4)] "Provider" is defined by KRS 205.8451(7).

(7) [(5)] "Recipient" is defined by KRS 205.8451(9).

Section 2. Health Care-Acquired Conditions. (1) The department or a managed care organization shall not reimburse for medical assistance in any inpatient hospital setting for a health care-acquired condition.

(2) In accordance with 42 C.F.R. 447.26(d), if a health care-acquired condition occurs, an inpatient[a] hospital shall report the health care-acquired condition to the department by:

(a) Identifying the health care-acquired condition on a claim or document attached to or associated with the services or course of treatment provided to the recipient that was not a health care-acquired condition; or

(b) If not submitting a claim for services or a course of treatment provided to the recipient, report the health care-acquired condition in writing to the department within twelve (12) months of the occurrence of the health care-acquired condition[;]

(a) Identify, on the claim or document attached to or associated with the claim or course of treatment, the health care-acquired condition; and

(b) Submit the claim, a document associated with or regarding the claim, to the department within thirty (30) days of the occurrence of the health care-acquired condition[.]

Section 3. Other Provider Preventable Conditions. (1) The department or a managed care organization shall not reimburse for a:

(a) Wrong surgical or other invasive procedure performed on a recipient;

(b) Surgical or other invasive procedure performed on the wrong body part; or

(c) Surgical or other invasive procedure performed on the wrong person.

(2) In accordance with 42 C.F.R. 447.26, a provider who performs a procedure listed in subsection (1) of this section shall report it to the department:

(a) By indicating the procedure on a claim or document attached to or associated with a claim for services, other than the services related to the procedure, provided to the recipient; or

(b) In writing within twelve (12) months of the procedure if the provider does not submit a claim for payment to the department for services provided to the recipient[in writing, which shall include by electronic means or paper, to the department within thirty (30) days of performing the procedure].

(3) Subsection (1) and (2) of this section shall not apply to a nursing facility or an intermediate care facility for individuals with an intellectual or[mental retardation or a] developmental disability.

Section 4. Compliance with 42 C.F.R. 447.26. The department's or managed care organization's reimbursement shall comply with 42 C.F.R. 447.26(c)(2) and (3).

Section 5. Supersede. If any policy stated in another administrative regulation within Title 907 of the Kentucky Administration Regulations contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within Title 907.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 3, 2012

FILED WITH LRC: October 3, 2012 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Lee, Jill Hunter, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies (managed care and non-managed care) regarding health care-acquired conditions and other provider preventable conditions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal mandate in the Patient Protection and Affordable Care Act and 42 C.F.R. 447.26.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that the Department for Medicaid Services (DMS) and managed care organizations (MCOs) won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.

(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 Patient Protection and Affordable Care Act and KRS 205.560 by establishing that DMS and MCOs won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments replaces the requirement that a provider report a health care-acquired condition or other provider preventable condition within thirty (30) days with a requirement that such provider report a health care-acquired condition or other provider preventable condition on the claim associated with services provided to the recipient or within twelve (12) months if the provider does not submit a claim to the department for services to the given recipient.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make the reporting requirement consistent with claims' filing requirements and eliminate an administrative burden on providers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by making the reporting requirement consistent with provider claims' filing requirements and eliminate an administrative burden on providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by making the reporting requirement consistent with provider claims' filing requirements and eliminate an administrative burden on providers.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect inpatient and outpatient hospitals, ambulatory surgical centers, physicians' practices, advanced practice registered nurse practices, rural health clinics, federally-qualified health care centers, primary care centers, and dentists' practices.

(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 provider, other than an inpatient hospital, performs a provider preventable condition they are re-

quired to report it to the Department for Medicaid Services within thirty (30) days. An inpatient hospital is required to report a health care-acquired condition on a claim associated with services provided to the recipient or within twelve (12) months of the health care-acquired condition if the hospital does not submit a claim for services provided to the recipient.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not reimbursing for provider preventable conditions may decrease the likelihood of provider preventable conditions occurring.

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

(a) Initially: DMS anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.

(b) On a continuing basis: DMS anticipates no continuing cost resulting from the provider preventable condition amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Title XIX of the Social Security Act and matching funds of general fund 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(19), 42 U.S.C. 1396a(a)(30) and 42 C.F.R. 447.26.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.560(1) states, "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act and 42 C.F.R. 447.26 prohibit federal payments for provider preventable conditions. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 U.S.C. 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter, additional or different requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is authorized by 42 C.F.R. 447.26 and this administrative regulation.

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 for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue 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 Department for Medicaid Services (DMS) anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates very minimal on-going cost to administer the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

PROPOSED AMENDMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.945, 164.946, 164.947, 164.992, 165A.320

STATUTORY AUTHORITY: KRS 164.947(1), (2), 164.020(37)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(9) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(10) "President" means the president of the Council on Postsecondary Education.

(11) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2) An out-of-state college shall be licensed separately for each instructional site in Kentucky. An out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other

degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctor, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and whenever the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11)(a) of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:

a. A statement of the purpose of the institution, its educational programs, and curricula;

b. A description of its physical facilities;

c. Its status regarding licensure;

d. Its fee schedule and policies regarding retaining student fees if a student withdraws;

e. Its refund policy on tuition and other instructional charges; and

f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1){(a)} An application for a license shall be submitted on the form entitled:

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(a)[1-] Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b)[2-] Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college. ~~[(b) A college that is not licensed as of the effective date of this administrative regulation shall submit an application for a license within sixty (60) working days of the effective date of this administrative regulation.]~~

(2) An application shall be accompanied by copies of the following:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;
- (f) 1. Documentation of accreditation, licensure, or approval by appropriate agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with the dates and reason for the[and] loss or denial; or

b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or[of] denial; and

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days following the site visit.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (2) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) A conditional license shall not exceed a period of two (2) years and shall include the conditions the[a] college shall meet in order for the[a] college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The[A] college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the[a] college's written request for an extension with supporting justification.

(b) If the[a] college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A ["Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020["] shall be required at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020["] shall be required at least (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A ["Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020["] shall be required at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a ["Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020["] at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus.

(e) A ["Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020["] shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program.

(f) A college shall submit a ["Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020["] at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a ["Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020["] within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;

2. A college losing accreditation or licensure; or

3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a

license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. Within thirty (30) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

- (1) Approve the supplementary application and amend the current license without changing the renewal date;
- (2) Deny the supplementary application without amendment to the college's license;
- (3) Suspend or revoke the college's license; or
- (4) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this subsection in order to be licensed.

(1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

- (a) Financial statements including:
 1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;
 2. An audit report prepared by an independent certified public accountant for each corporation of the college; and
 3. If available, audit reports for the past three (3) years;
- (b) The name of a bank or other financial institution used by the college as a reference;
- (c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) An in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted endowment equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) A college shall provide a statement from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted endowment or letter of credit to satisfy the provisions of subsection (3) of this

section shall notify the president if the unrestricted endowment or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the appropriate application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

(d) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the appropriate application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(7) Library resources. The library shall be appropriate to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;
2. 120 student credit hours for a baccalaureate degree; or
3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution[created by KRS 164.004].

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution[created by KRS 164.004].

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs, and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010[the effective date of this administrative regulation], shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include the following:

(a) Adequate supervision by the college; and

(b) Other instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form: "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent.

(b) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his background, to record his progress through the instructional program, and for reference purposes.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records ~~if~~[in the event] the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college as indicated below:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2. a. Except as provided in clause b₂ of this subparagraph, tuition and other instructional charges shall be charged by the

enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2_c of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an ["Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020"] to the president in accordance with subsection (2) of this section. The application shall contain the following information:

(a) Financial Information.

1. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

2. A statement prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation; and

3. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year;

(b) Institutional information.

1. Name and address of college;

2. Chief executive officer's name, title, address, phone number, fax number, and email address;

3. Institutional liaison's name, title, address, phone number, fax number, and email address;

4. A current list of the college's agents;

5. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last year; and

6. Copy of any articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last year;

(c) Accreditation status.

1. If the college is accredited by an accrediting agency, verification of the college's accreditation status; or

2. If the college is not accredited by an accrediting agency, a statement indicating if, when, and from whom the college will seek accreditation;

(d) Tuition for current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

(e) A copy of the college's current catalog;

(f) For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

(g) Program information.

1. Changes, if any, in program requirements for each program within the last year including admission requirements, courses required, and the number of credit hours required for the program or major;

2. Results of the most recent program evaluation;

3. Methods used to assess student achievement;

4. Results of the most recent assessment of student achievement; and

5. A list of programs withdrawn within the last year in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

(h) Faculty information. Vitae for each program faculty member employed within the last year;

(i) Facilities information. Verification of compliance with all applicable local, state, and federal safety and fire codes; and

(j) Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

~~(2)(a) A college whose license expires by July 1, 2010 shall complete and submit the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" for maintenance of its license by May 1, 2010. If that college's license is subsequently renewed, the college shall complete the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" in accordance with paragraph (b) of this subsection for future renewals.~~

~~(b) A college whose license expires after July 1, 2010 shall complete the ["Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020"] by April 1 of each every year beginning April 1, 2011.~~

(3) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(4) Within ninety (90) working days of the submission of a complete and accurate ["Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020"] if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date; or

(d) Renew the college's license to June 30 of the next year.

(5) A college's failure to submit a complete and accurate ["Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020"] shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the ["Licensure Compliance Reporting Manual"].

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating ~~or~~ soliciting shall comply with Section ~~8(13)(f)~~~~8(13)(g)~~ of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed.

(1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing consistent with the provisions of KRS 13B.005-13B.170, in order to determine the facts if the president has determined that there is sufficient cause for a suspension or revocation of a license or placement of a college's license in a probationary status.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If the findings warrant, the president shall impose the sanctions authorized in this section.

(5) If it is determined that the public interest requires that sanctions be imposed, the president shall take one (1) or more of the following steps:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(6) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(7) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section;

4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the ~~["Kentucky Licensure Fee Schedule"]~~ ~~that is incorporated by reference in Section 16 of this administrative regulation.~~

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", November 2009;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", November 2009;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", November 2009;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(g) "Supplementary Application to Operate as an In-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", November 2009;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", November 2009;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", November 2009;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;~~and~~

(l) "Kentucky Licensure Fee Schedule", January 2010; and
(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAM MILLER, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: October 3, 2012

FILED WITH LRC: October 9, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2012 at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. 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: Sarah Levy, Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 350, fax (502) 573-1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private postsecondary education institutions, and proprietary postsecondary education institutions that are not licensed by the Commission on Proprietary Education.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 requires that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals.

(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 process for a religious in-state college to operate or solicit in Kentucky outside the standard licensure process is outlined.

(b) The necessity of the amendment to this administrative regulation: In keeping with KRS 164.947(2), the amendment allows religious in-state colleges to provide, without restriction, religious instruction or training solely for the purpose of preparing students for occupations in the ministry while still meeting the Council's standards for consumer protection.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.947(2) by ensuring that the Council does not restrict religious instruction or training through its licensure process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a process by which a religious in-state college can request an exemption from standard licensure so that solely religious instruction or training shall not be restricted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Religious in-state colleges will be impacted as they used to have to complete an application for licensure with the

Council, and under the amendment will now complete an application for exemption.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, 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: A religious in-state college will complete the "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)" and submit to the Council for the institution to receive the religious exemption set forth in Section 2(7) of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no fee for this. Institutions will just have the cost of staff to complete the application form each year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the institutions will be a simple process to obtain authority to operate or solicit in Kentucky in keeping with the requirements of KRS 164.947(2) that solely religious instruction or training not be restricted.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation. However, fewer licensing fee revenues may be collected if currently licensed institutions meet the requirements to be considered a religious in-state college.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees.

(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. Implementation of this amendment does not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No. The proposed amendment to the regulation does not establish any fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering is applied. If able to verify the requirements set forth in Section 2(7), religious in-state colleges shall be exempt from the standard college licensing requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? CPE is responsible for implementation, but this regulation only applies to private colleges and universities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.947 and 164.020(37)

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

(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? We estimate revenue generation of \$272,400 per year for CPE.

(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? See 4(a).

(c) How much will it cost to administer this program for the first year? Approximately \$274,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$274,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

**FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)**

102 KAR 1:225. General compliance with federal tax laws.

RELATES TO: KRS 161.716, 161.600, 161.470, 26 C.F.R., 26 C.F.R. 401(a)(7),(8), (25), 26 U.S.C. 414(d), (p), (u), 26 U.S.C. 503(b), 38 U.S.C. 4301 – 4335

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Kentucky Teachers' Retirement System shall administer the Retirement System as a qualified defined benefit plan pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code. 26 U.S.C., 26 C.F.R., and such other Internal Revenue Code Sections as applicable. This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with 26 U.S.C. 401(a) and 503(b) in order for the Kentucky Teachers' Retirement System to maintain its tax qualified status as a public defined benefit plan. This administrative regulation also includes provisions intended to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008, "HEART Act". This administrative regulation adds provisions that have been required as part of the determination letter process regarding vested benefits.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and (8) for Vesting and Forfeitures. (1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2)(a) In conformity with 26 U.S.C. 401(a)(8), a forfeiture of benefits by a member or former member of the plan shall not be used to pay benefit increases.

(b) Forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of the Kentucky Teachers' Retirement System, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded.

(4) In order to comply with Internal Revenue Service interpretations, subject to the provisions of KRS 161.470, a member shall have a nonforfeitable interest in his accrued benefit at attainment of age sixty (60) with[and] the completion of five (5) years of service.

(5) Subject to the provisions of KRS 161.470, a member who completes at least five (5) years of service and terminates employment shall be vested in his accrued benefit and shall be entitled to that benefit upon the attainment of normal retirement age, which is age sixty (60), unless the member withdraws his accumulated contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, Contributions, benefits,

and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 – 4335.

(2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualifying military service, as defined in 38 U.S.C. Chapter 43 to the extent required by section 26 U.S.C. 401(a)(37) of the Internal Revenue Code, survivors of a member of the Kentucky Teachers' Retirement System, shall be entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(3) Beginning January 1, 2009, to the extent permitted by (sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service, as defined in 38 U.S.C. Chapter 43)[,] from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as annual compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. The board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. (1) Kentucky Teachers' Retirement System shall comply with 26 U.S.C. 401(a)(25) to determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution for specific benefit calculation purposes.

(2) These benefits shall not be subject to employer discretion.

DR. TOM SHELTON, Chairperson

APPROVED BY AGENCY: September 17, 2012

FILED WITH LRC: October 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2012, at 9:00 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2012, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with specified provisions of the Internal Revenue Code in order for the retirement system to maintain its tax qualified status as a public defined benefit plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

to the content of the authorizing statutes by ensuring the absence of conflicts with federal laws and proper administration of the retirement system's qualified defined benefit plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by removing any conflicts with applicable federal law.

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

(a) How the amendment will change this existing administrative regulation: Adds references to KRS 161.470 and 161.600 and provides that, subject to KRS 161.470, members who vest their account and then terminate employment will be entitled to a benefit upon retirement at age 60, unless they withdraw their accumulated contributions.

(b) The necessity of the amendment to this administrative regulation: To include specific language regarding treatment of members who complete enough service to vest their account then terminate their employment before the normal retirement age of 60 and absent withdrawal of accumulated contributions.

(c) How the amendment conforms to the content of the authorizing statutes: Ensures compliance with Internal Revenue Service interpretations of the Internal Revenue Code regarding eligibility of vested members to retirement benefits prior to the normal retirement age of 60 and absent withdrawal of accumulated contributions.

(d) How the amendment will assist in the effective administration of the statutes: Assists in the effective administration of the retirement system by ensuring compliance with the Internal Revenue Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members who vest their accounts, terminate employment prior to attaining the normal retirement age of 60, and do not withdraw their accumulated contributions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members must complete at least five years service to vest their account and must not withdraw their contributions.

(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 the members of the retirement system other than normal employee retirement contributions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will have access to some level of retirement allowance.

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

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

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The retirement system is funded with member and employer contributions and earnings from investments made by the board of trustees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Robert B. Barnes

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? Employers of members of Kentucky Teachers' Retirement System which include local school districts, 5 universities, the Kentucky Community and Technical College System, the Kentucky Department of Education, the Education Professional Standards Board, and the Kentucky High School Athletic Association.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.716, KRS 161.470, KRS 161.600, 26 C.F.R., 26 U.S.C. 401(A), 414(D), (P), (U), 503(B), 38 U.S.C 4301-4335.

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? There are no costs associated with this amendment.

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an apprentice program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. [(4)] An applicant for registration as a pharmacist intern shall:

(1) ~~File[register with the board by filing]~~ an ["Application for Registration as a Pharmacist Intern,"] Form 1, with the board; [.]

(2) ~~[The applicant shall]~~ Attach a recent head and shoulders passport photograph, that is not a proof copy or plastic identification[.]

(2) ~~Prior to registration, an applicant shall have:~~

(a) ~~Been accepted by a college or school of pharmacy approved by the board;~~ and

(3) ~~Submit[(b) Submitted]~~ proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. [(4)] An applicant for examination for licensure as a

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

pharmacist shall:

(1) ~~Complete~~^[have completed] 1,500 hours of internship~~[-]~~;
(2) ~~Be awarded~~ credit for internship~~[shall be awarded]~~ for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

(3) ~~Completing the academic coursework. Credit shall~~ Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

(4) ~~Clinical rotations. (3) Credit for internship shall~~ Be limited to internship credit;

(a) ~~Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board~~^{[not actively enrolled in a college or school of pharmacy]; and}

(b) ~~Of twenty (20) hours per week during academic sessions~~^[if the pharmacist intern is actively enrolled] in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours~~[-]~~;

(5) ~~(4)(a) Credit shall~~ Be given credit for the following forms of internship:

(a) ~~[1]. Completion of an academic experience program;~~

(b) ~~[2]. Work performed in a pharmacy under the supervision of a preceptor;~~^[or]

(c) ~~[3]. Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours and the pharmacist intern shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which shall be approved by the board president; or~~

(d) ~~[- (b)] An internship performed outside of Kentucky~~^[shall be credited] if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

(6) ~~[- (5) Credit shall~~ Not be awarded for an internship completed prior to registration with the board.

Section 4. A pharmacist intern shall:

(1) ~~[A pharmacist intern shall]~~ Be issued a ~~["Registration Identification Card"]~~;

(2) ~~[A pharmacist intern shall: (a)]~~ Carry the ~~["Registration Identification Card"]~~ when on duty; and

(3) ~~[(b)]~~ Show it upon request to a member of the board or its authorized agent.

Section 5. ~~[(1)(a) Except as provided by paragraph (b) of this subsection,]~~ The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

(1) ~~[1-]~~ Currently enrolled in a college or school of pharmacy approved by the board;

(2) ~~[2-]~~ A current applicant for licensure as a pharmacist in Kentucky; or

(3) ~~[3-]~~ Awaiting the results of an examination.

Section 6. ~~[(b)]~~ The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

(1) ~~[1-]~~ The intern is on a semester break; or

(2) ~~[2-]~~ Personal or family health concerns or other reasons beyond the control of the pharmacist intern ~~necessitate~~^[that necessitates] a temporary absence from enrollment and the absence is approved by the board.

Section 7. ~~[(2)]~~ A person who is not registered as a pharmacist intern shall not:

(1) ~~[(a)]~~ Hold himself out as a pharmacist intern; or

(2) ~~[(b)]~~ Perform the duties of a pharmacist intern.

Section 8[6]. (1)[A Beginning August 1, 2000,] A preceptor shall be a pharmacist whose license is in good standing and~~[who]~~:

(a) Has been licensed by the board for at least one (1) year; and

(b) Has requested in writing to be designated as a preceptor~~[1- is a community-based faculty member of a college or school of pharmacy approved by the board; or~~

2. Meets the standards established by a college or school of Pharmacy approved by the board for a community-based faculty member].

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 9[7]. Credit for Non-Academic Experience Programs.

(1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a ~~["Pharmacist Preceptor's Affidavit, Form II"]~~.

(2) On or before graduation from a college or school of pharmacy~~[October 1 of each year of an internship]~~, a pharmacist intern shall submit an ~~["Internship Report, Form III"]~~^[A pharmacist intern who performs work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmaceutical business, or other entity shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy.]

(3) An academic experience program shall be reported on an "Academic Experience Affidavit, Form IV" which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 10[8]. Credit for Academic Experience Programs. (1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 11[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration as a Pharmacist Intern", Form I, 11/2012[1-(5/99)];

(b) ~~["Registration Identification Card"]~~; (c) ~~["Pharmacist Preceptor's Affidavit"]~~, Form II, 11/2012[2-(5/99)];

(d) ~~[(d) "Internship Report"]~~, Form III, 11/2012[(9/99)]; and

(e) ~~[(e) "Academic Experience Affidavit"]~~, Form IV, 11/2012[(5/99)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601[Spindletop Administrative Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511], Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: October 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative hearing shall be held on Thursday November 29, 2012 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday November 30, 2012 at 11:59 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the standards for the training, qualifications, and registration of a pharmacist intern.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding pharmacist interns.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for training, qualifications and registration of a pharmacist intern.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation details the credit that is awarded for non-academic sessions and academic sessions, defines requirements of preceptor, establishes approval by the Board President for awarding special credit for academic sessions, and changes dates for submission of Internship Report.

(b) The necessity of the amendment to this administrative regulation: Requires pharmacist interns to apply for registration as a pharmacist intern, obtain academic or non-academic hours for credit as a requirement for licensure as a pharmacist, and requirements of a preceptor.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for registration, training and qualifications of a pharmacist intern.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to require that individuals that apply for a pharmacist intern registration know the requirements of registration and obtaining credit for academic or non-academic sessions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect 600 new applicants each year for pharmacist intern registration and will affect around 600 pharmacist interns seeking credit for academic or non-academic sessions each 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: The Board will issue a pharmacist intern registration, issue credit for academic and non-academic sessions, and issue preceptor status to pharmacists that qualify.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for registration as a pharmacist intern and this expires in six (6) years. This fee is al-

ready established.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful completion of the application for registration as a pharmacist intern will be issued a certificate that expires in six (6) years and receive credit for academic and non-academic sessions, which is a requirement to sit for examination as a pharmacist.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

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

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

(9) TIERING: Is tiering applied? Tiering was applied as the regulation is applicable to any individual applying for a pharmacist intern registration in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1) requires or authorizes the action taken by this administrative regulation.

(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? None.

(d) How much will it cost to administer this program 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.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," ~~October~~June 12, 2012, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 12/08/09)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 10/12/12~~2/45/06~~)
- 2.12 Abandoned Inmate Funds (Amended 6/12/12)
- 3.1 Code of Ethics (Amended 07/09/07)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)
- 3.9 Student Intern Placement Program (Added 9/13/2010)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 9/13/10)
- 3.14 Employee Time and Attendance Requirements (Added 9/13/2010)
- 3.17 Uniformed Employee Dress Code (Amended 4/10/06)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 4.4 Educational Assistance Program (Amended 8/25/09)
- 5.1 Research and Survey Projects (Amended 5/15/08)
- 5.3 Program Evaluation and Measurement (Amended 6/12/12)
- 6.1 Open Records Law (Amended 5/14/07)
- 8.2 Fire Safety (Amended 2/15/06)
- 8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 10/12/12~~11/9/04~~)
- 9.6 Contraband (Amended 6/12/12)
- 9.8 Search Policy (Amended 11/9/10)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.20 Electronic Detection Equipment (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 10/12/12~~6/42/12~~)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 10.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
- 11.4 Alternative Dietary Patterns (Amended 5/15/08)
- 13.1 Pharmacy Policy and Formulary (Amended 8/25/09)
- 13.2 Health Maintenance Services (Amended 11/9/10)
- 13.3 Medical Alert System (Amended 10/14/05)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 5/15/08)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12~~11/9/04~~)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 12/13/05)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 10/12/12~~9/13/10~~)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 07/09/07)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 6/12/12)
- 14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
- 15.1 Hair, Grooming and ID Card Standards (Amended 10/12/12~~9/13/10~~)
- 15.2 Rule Violations and Penalties (Amended 9/13/10)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended 10/14/05)
- 15.7 Inmate Account Restriction (Amended 11/9/10)
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12~~6/42/12~~)

- 16.2 Inmate Correspondence (Amended 10/12/12~~11/9/10~~)
- 16.3 Inmate Access to Telephones (Amended 10/12/12~~9/13/10~~)
- 16.4 Inmate Packages (Amended 07/09/07)
- 17.1 Inmate Personal Property (Amended 6/12/12)
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 5/15/08)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 07/09/07)
- 18.2 Central Office Classification Committee (Amended 10/14/05)
- 18.5 Custody and Security Guidelines (Amended 6/12/12)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 11/15/06)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12~~07/09/07~~)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 12/08/09)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 22.1 Privilege Trips (Amended 10/14/05)
- 23.1 Religious Programs (Amended 10/12/12~~9/13/10~~)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community Center Program (Amended 07/09/07)
- 25.8 Extended Furlough (Amended 4/12/05)
- 25.10 Administrative Release of Inmates (Amended 11/9/10)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12~~Added 9/15/04~~)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: October 9, 2012

FILED WITH LRC: October 12, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2012 at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Department of Corrections into compliance with ACA Standards and updates current practices for the department and its institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,939 employees, 21,388 inmates, visitors, volunteers, and others who enter state correctional institutions.

(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: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the state correctional institutions.

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

(a) Initially: No increase in fees or funding is anticipated.

(b) On a continuing basis: No increase in fees or funding is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the 2012-2013 fiscal

year.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation establishes fees for inmates, e.g. health services co-pays. The amendments to the regulation do not establish additional fees or increase any existing fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and each state correctional institution.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020.

(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? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections or other government entity.

(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 do not create any revenue for the Kentucky Department of Corrections or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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:

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (Amendment)

601 KAR 13:110. Driver education programs.

RELATES TO: KRS 45A.365, 186.018, 186.410, 186.535, 186.574, 189A.010(2), 332.204, 332.206, 332.210

STATUTORY AUTHORITY: KRS 186.400(1), 186.574(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations regarding the licensing of a motor vehicle operator. KRS 186.574 requires the Transportation Cabinet to promulgate administrative regulations regarding the supervision and operation of state traffic schools for new drivers and traffic

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

offenders. This administrative regulation establishes the minimum standards for a new driver state traffic school. This administrative regulation also designates those persons eligible for a[who will attend this] new driver education program, and establishes the application and approval procedures to teach the program for private driving schools,[licensed pursuant to KRS 332.030] and the method of notification to the cabinet of completion of the program.

Section 1. State Traffic School. (1) The Transportation Cabinet shall establish a separate curriculum and class for the new driver state traffic school (graduated driver licensing education) and the traffic offender state traffic school. (2) The Transportation Cabinet shall select[secure] instructors and secure classroom locations for the[both of the] state traffic schools established in KRS 186.574(1).

(3) The Transportation Cabinet shall conduct at least two (2) new driver state traffic schools in each Kentucky[every] county during each[every] calendar year.

(4) A person eligible for new driver state traffic school may:

(a) Attend class in a classroom setting free of charge as established in KRS 186.410(4)(c); or

(b) Attend class by accessing a cabinet-approved traffic school Web site.

(5) The traffic school Web site shall be offered by a vendor selected by the cabinet pursuant to the competitive bidding process established in KRS 45A.365.

(6) A vendor shall charge a convenience fee for the use of the vendor's on-line driver education course[(a) A person under the age of eighteen (18) years who obtained an operator's license prior to October 1, 1996:

(a) Shall not be required to attend a KRS 186.410(4) driver education course;

(b) May attend a new driver state traffic school free of charge].

Section 2. High School Driver Education Course. If a high school in Kentucky offers a driver education course for credit to its students, the school shall notify the Transportation Cabinet of a student who receives credit for successfully completing the course. The notice shall contain the following information:

(1) Student's name;

(2) Student's Social Security or operator's license number;

(3) School district;

(4) Name of high school;

(5) Copy of the certification of course completion and credit given;

(6) Date of course completion; and

(7) Name and telephone number of person at school to contact.

Section 3. ~~[KRS Chapter 332]~~ Licensed Driver Training Schools.

(1) A driver training school licensed pursuant to KRS 332.204 shall[under KRS Chapter 332 may] apply to the Transportation Cabinet for approval to conduct a driver training program[pursuant to KRS 186.410] if the driver training school[it]:

(a) ~~[1-] Has been licensed [by the Kentucky State Police] for the prior two (2) calendar years;~~

(b)[or 2-] Is operated by a person with[who has] a driver education teaching certification from the Kentucky Department of Education[and] who has taught driver education pursuant to that endorsement for a minimum of two (2) years;

(c)[or 3-] Is operated by a person who has taught driver education at a school approved as established in KRS 332.204[KRS Chapter 332 approved school] for a minimum of five (5) years;

(d)[- (b)] Has at least twenty (20)[hours of] office hours each week routinely staffed by a person familiar with the school's curriculum and requirements; or

(e)[(c)] Uses a curriculum that[which] meets the requirements of Section 4(6) of this administrative regulation.

(2) The applicant shall submit the following to the Transportation Cabinet, Division of Driver Licensing:

(a) A detailed copy of the curriculum used, including a copy of all handouts and audio or video material;

(b) The resume of each instructor proposed to teach the course;

(c) The business address, telephone number, and office hours;

(d) A copy of the ~~[KRS Chapter 332]~~ certificate issued pursuant to KRS 332.206[by the Kentucky State Police]; and

(e) A fee of \$300 as established in KRS 332.204(2)[\$250 fee] to pay for the initial evaluation of the application.[(3) A school which has been approved to participate in the program may request that a student who began a driver education course at the school after September 30, 1996 and who completed the course by February 28, 1997, be given credit for compliance with the requirements of KRS 186.410.]

Section 4. Class Requirements. (1) A class offered pursuant to KRS 186.410(4)(b) or (c) in a classroom setting shall be limited to a maximum of fifty (50)[twenty-five (25)] students.

(2) A class ~~offered pursuant to KRS 186.410(4)(b) or (c)]~~ shall contain a minimum of four (4) hours of ~~classroom~~ highway safety training that[which] shall include an administrative activity[administrative activities] related to the class.

(3)(a) A Transportation Cabinet approved preclass and post-class test shall be administered to all students and the results tabulated for each class taught.

(b) The results and the attendance roster shall be submitted to the Transportation Cabinet, Division of Driver Licensing ~~with the attendance roster required by subsection (5) of this section].~~

(4) ~~[At least two (2) weeks prior to each class to be taught under the provisions of this administrative regulation, the school shall notify the Transportation Cabinet of the following:~~

(a) Date, time, and location of the scheduled class; and

(b) Instructor scheduled to teach the class.

(5) The school shall notify the Transportation Cabinet of a[each] student who successfully completes the course. The notice shall contain the following information:

(a) Student's name;

(b) Student's Social Security or operator's license number;

(c) Name of school;

(d) Date of course completion;

(e) Course instructor; and

(f) The name and telephone number of a person at school to contact.

(5) ~~[(6)]~~ The curriculum taught to each class shall consist of the following ~~[sections]:~~

(a) A section on the dangers of alcohol and drugs that[which] shall last for a minimum of forty-five (45) minutes and include:

1. Information about Kentucky's "Under 21" license and implied consent law;

2. Types of substances that[which] impair driving ability;

3. Blood alcohol content and the presumptive levels established in KRS 189A.010(2);

4. Legal, monetary, and social sanctions or penalties for the[of a] conviction of a violation of KRS 189A.010(1);

5. Restricted criteria for obtaining a hardship license as established in[pursuant to] KRS 189A.410;

6. Psychological and physiological effects of alcohol consumption;

7. The penalties in foreign countries ~~[Other country's penalties]~~ for operating a motor vehicle under the influence of alcohol; and

8. National and state statistics related to alcohol or drug use while operating a motor vehicle;[and alcohol or drug consumption.]

(b) A section on defensive and perceptive driving that[which] shall last for a minimum of forty-five (45) minutes and include:

1. Traits of good drivers

2. Traits of safe drivers;

3. Mental skills needed for safe driving;

4. The "Scan Identify Predict Decide Execute" (SIPDE) approach to perceptive driving;

5. Driving emergencies including:[such as]

a. Brake or tire failure;[;]

b. Skidding;[;]

c. Stuck accelerator; and[; or]

d. Running off the roadway;[and]

6. Information on[6-] crash-producing locations or situations; and

7. Information on[such as intersections, hydroplaning, railroad crossings, many vehicle types in the traffic mix, and pedestrian traffic. (c)]seatbelt usage that[which] shall last a minimum of[for at

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

least] thirty (30) minutes and include:

- a.[1.] Kentucky's seatbelt law;
- b.[2.] Kentucky's child restraint law;
- c.[3.] Information on vehicle airbags; and

d. The[4.] number of fatalities and injuries in crashes from not wearing seatbelts;

(c)[and 5. ~~Seatbelt usage.~~ (d)] Driver behavior training that[which] shall last for a minimum of forty-five (45) minutes and include:

1. Information on the[Driving requires] physical, social, and mental skills required by driving;
2. Personality changes that[which] occur while driving;
3. How driving behaviors and reaction are related to attitude;
4. Need for and importance of self-control while driving; and
5. National, state, and local statistics on vehicle crashes; and

(d) A presentation for a minimum of thirty (30) minutes on the[~~(e)]rules of the road that shall[which shall last for a minimum of thirty (30) minutes and]~~ include:

1. The purpose and significance of the Graduated Driver Licensing Program;
2. The role of the Division of Driver Licensing in maintaining driving records;
3. The content of driving records available to insurance companies;
4. Recognition of the need for and purpose of traffic laws;
5. The most commonly violated traffic laws;
6. Speeding as a major contributing factor in vehicle crashes; and
7. Sanctions or penalties assessed for violating traffic laws.

Section 5. Instructor Requirements. (1) An instructor employed to teach the driver education class[KRS 186.410 course by a school approved pursuant to the requirements of Section 3 of this administrative regulation] shall meet the following requirements:

- (a) Be at least twenty-one (21) years of age;
- (b) Have a four (4) year college degree. Experience as a professional driver education instructor may substitute year for year for the college education;
- (c) Never have been convicted of a felony;
- (d) Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;
- (e) Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in system;
- (f) Have fewer than six (6) penalty points as established in[points assigned pursuant to] 601 KAR 13:025 on his or her driving history record;
- (g) Not have had his or her driving privilege withdrawn[for any reason] in the past five (5) years; and
- (h)[Successfully enroll in, pay the \$100 fee for, and complete the instructor training course offered by the Transportation Cabinet;
- (i)] Have good communication skills as demonstrated[indicated] during an interview; and
- (j) Be of good moral character.

(2) The approved school shall review the driving history record of an instructor annually.

Section 6. Evaluations. (1) The Transportation Cabinet shall perform a random or routine performance audit of an approved school or its instructor.

(2) A school shall be notified in writing of a deficiency discovered in an audit. The deficiency shall be corrected prior to its next scheduled class or the school's approval shall be withdrawn by the Transportation Cabinet.

(3) The license of a driver training school or instructor shall be suspended or revoked as established in KRS 332.210[The Kentucky State Police shall be provided a copy of each performance evaluation of a school licensed pursuant to KRS Chapter 332].

(4) A representative from the Transportation Cabinet may[shall be allowed free of any charge to] monitor without cost a class taught by the driver training school[school pursuant to the provisions of this administrative regulation].

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: September 30, 2012

FILED WITH LRC: October 1, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2012 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business November 30, 2012. 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann Dangelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for a new driver state traffic school, designates the persons eligible for driver education programs, establishes the application and approval process for private driving schools, and establishes the method of notification to the cabinet when the driver education program is completed.

(b) The necessity of this administrative regulation: This regulation is necessary to insure that new driver state traffic schools and instructors understand the requirements and procedures involved in establishing and maintaining a traffic school program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 186.574 by addressing the procedures for administering state traffic school programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation insures that procedures for state traffic schools are established pursuant to KRS 186.574(1).

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

(a) How the amendment will change this existing administrative regulation: This amendment will add an online new driver training program offered by a vendor in addition to the current classroom program. It will update changes in law and procedures that have occurred since this administrative regulation was originally promulgated in 1997.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to inform the public that an online new driver training program is available in addition to the classroom training, and to update changes in law and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment follows the structure and mandates provided by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The addition of an online training program to the current classroom training will make new driver education more accessible and convenient by offering an alternative to classroom attendance.

(3) List the type and number of individuals, businesses, organi-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

zations, or state and local governments affected by this administrative regulation: This administrative regulation affects new drivers, driver training schools, and the Division of Driver Licensing at the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any new or different actions for any of the entities in (4). Rather, the amendments will offer an alternative to the current classroom driver education training. This amended regulation should update and clarify the program for all those involved.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A new driver may take the usual training class by attending in person, or may choose to take an online course by paying a reasonable fee to a vendor for the convenience of using their system and program. A vendor to offer this service will be selected pursuant to KRS 45A.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current requirements and procedures for driver training schools and instructors. New drivers will benefit by having an alternative online course.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementation of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The alternative online program will be offered by a vendor who will charge a convenience fee for the use of their program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish a fee. It allows a vendor to charge a reasonable fee for the use of its program services.

(9) TIERING: Is tiering applied? No. All students who apply for the program will be offered the same training and the choice between classroom and online training.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet's Division of Driver Licensing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.400 and 186.574.

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. Expenditures and revenues will not be affected.

(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? These amendments will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? No costs are anticipated.

(d) How much will it cost to administer this program for subsequent years? No costs are anticipated.

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:

TRANSPORTATION CABINET Office of the Secretary Department of Aviation (Amendment)

602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission.

RELATES TO: KRS 183.861, 183.865, 183.867, 183.868, 183.870

STATUTORY AUTHORITY: KRS 183.861

NECESSITY, FUNCTION, AND CONFORMITY: KRS 183.861 authorizes the Airport Zoning Commission to regulate the use of land within and around designated airports in the Commonwealth. ~~[KRS 183.867 specifies that the commission has jurisdiction over zoning for all public use and military airports.]~~ This administrative regulation ~~establishes~~defines the areas over which the Kentucky Airport Zoning Commission ~~shall have zoning~~has jurisdiction ~~[for the purpose of zoning in accordance with KRS Chapter 183] and establishes if a permit shall be required from a property owner~~[specifies when the owner or person who has control over a structure which encroaches on the jurisdiction of the Kentucky Airport Zoning Commission shall apply for a permit].

Section 1. Zoning Jurisdiction. The commission ~~shall have~~has zoning jurisdiction over ~~the~~that airspace ~~above~~over and around the ~~[public use and military] airports designated in KRS 183.861 that within the Commonwealth which~~ lies above the ~~[imaginary] surface extending~~[that extends] outward and upward at one (1) of the following slopes:

(1) 100 to one (1) for a horizontal distance of 20,000 feet from the ~~closest~~[nearest] point of the nearest runway of ~~an~~each public use and military airport with at least one (1) runway that is 3,200 feet or more in length; or

(2) Fifty (50) to one (1) for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of ~~an~~each public use and military airport with its longest runway less than 3,200 feet in actual length.

Section 2. Airspace. ~~(1) [The commission has zoning jurisdiction over the use of land and structures within public use airports within the state. Section 3.]~~ The commission ~~shall have~~has jurisdiction from the ground upward within the limits of the primary and approach surfaces ~~[of each public use and military airport]~~ as depicted on Airport Zoning Maps approved by the Kentucky Airport Zoning Commission.

~~(2) [Section 4.]~~ The commission ~~shall have~~has jurisdiction over the airspace of the Commonwealth that exceeds 200 feet in height above ground level.

~~(3) [Section 5.]~~ The owner or person ~~with~~who has control ~~of~~over a structure ~~that~~which penetrates or ~~may~~will penetrate the airspace over which the commission has jurisdiction shall apply for a permit from the commission ~~[in accordance with 602 KAR 50:090]~~.

RANDALL ROYER, Interim Chairman

MIKE HANCOCK, Secretary

D. ANN DANIELO, Assistant General Counsel

APPROVED BY AGENCY: September 14, 2012

FILED WITH LRC: September 18, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2012 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. 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: D. Ann D'Angelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann D'Angelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the areas over which the Kentucky Airport Zoning Commission (KAZC) has zoning jurisdiction.

(b) The necessity of this administrative regulation: This regulation is necessary to define the areas over which the KAZC has zoning jurisdiction and inform the public and adjacent landowners to an airport if they need to file a permit application with the commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 183.861 establishes KAZC and gives it authority to issue rules and regulations pertaining to land use around and on airports as defined in KRS 183.861. This administrative regulation designates the areas over which KAZC has jurisdiction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and update the zoning jurisdiction of KAZC around airports as defined by KRS 183.861.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation will be updated to include a previous statutory revision which expanded the types of airports under KAZC jurisdiction.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the jurisdiction of the KAZC.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will update the administrative regulation to include the current language of KRS 183.861.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies and updates the jurisdiction of the KAZC pursuant to KRS 183.861 so the public will have the most current requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All airports and members of the public that have control over a structure under the jurisdiction of KAZC.

(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: No change or impact is anticipated.

(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 action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): KRS 183.861 airports and members of the public will have the most current requirements in the administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with implementing this new administrative regulation.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because the basis for filing for a permit application depends on proximity to the airport.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Airport Zoning Commission (KAZC), the airports designated in KRS 183.861, and property owners around the airports.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 183.861

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be any effect on the expenditures of a state or local agency.

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

(c) How much will it cost to administer this program for the first year? No administrative costs are required or expected.

(d) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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:

TRANSPORTATION CABINET Office of the Secretary Department of Aviation (Amendment)

602 KAR 50:050. Airport zoning map.

RELATES TO: KRS 183.867

STATUTORY AUTHORITY: KRS 183.861, 183.867(2)(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 183.867 requires that designated airports file a map with the commission depicting the airport and the surrounding area[grants authority to the commission regarding zoning for public use and military airports]. This administrative regulation establishes the[provides]

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

procedures for the adoption and revision of airport zoning maps for the existing and future expansion of [planned public use and military] airports under the jurisdiction of the commission.

Section 1. Filing a Map. (1) Every owner of an [existing or planned public use and military] airport as established in KRS 183.867(1) [in the state] shall file with the administrator of the Kentucky Airport Zoning Commission:

(a) A map showing the airport and the area surrounding the airport used for approach and landing purposes; or [the owner shall file]

(b) An airport master plan.

(2) [Section 2.] If an airport owner [of a public use and military airport] fails to file a map [as provided under Section 1 of this administrative regulation], the administrator shall prepare [cause] an appropriate map [to be prepared] showing the airport and the area surrounding the airport used for approach and landing purposes.

(3) [Section 3.] The administrator shall designate the area of jurisdiction of the commission [as set forth in 602 KAR 50:030] and the [public use and military] airport [imaginary] surfaces [as set forth in Section 2 of 602 KAR 50:040 for each publicly-owned airport,] on the map or airport master plan [prepared or filed under Sections 1 and 2 of this administrative regulation].

Section 2. Submission of a Map [Section 4]. (1)(a) An [The] airport zoning map [prepared pursuant to Section 3 of this administrative regulation] shall be submitted to the commission [for its adoption by order of the commission].

(b) If the airport zoning map is adopted by order of the commission, the date of its adoption shall be noted on the airport zoning map, and the original shall be kept in the office of the administrator as established in KRS 183.867(3) [pursuant to KRS 183.867(3) and the administrative regulations of the commission].

(c) The [Section 5. (1) Every public use and military] airport owner [for which an airport zoning map has been adopted by the commission] shall inform the administrator of [any] changes in the existing or proposed boundaries, runways, or taxiways [either] by:

1. Filing a revised airport zoning map; or

2. Furnishing the administrator with information sufficient to prepare [cause] a revised map [to be prepared].

(2) The administrator shall designate the area of jurisdiction and airport [imaginary] surfaces on the revised map [prepared or filed under subsection (1) of this section].

(3) The revised map [prepared under this section] shall supersede a previous map upon the order of its adoption by the commission [constitute the airport zoning map for the public use and military airport upon its adoption by order of the commission and shall supersede any airport zoning map previously adopted by the commission].

Section 3 [6]. The administrator shall notify a [any] local zoning body [whose jurisdiction is limited by the zoning jurisdiction of the commission,] by sending [to the local zoning bodies] a copy of the airport zoning map adopted by order of the commission.

Section 4 [7]. [The local zoning bodies may retain jurisdiction of zoning in these areas as to all other matters; however,] The local zoning bodies shall not adopt an ordinance [any ordinances] or policy [regulations] that conflicts [conflict] with the jurisdiction of the commission in an area pertaining [areas as it pertains] to the [safe and proper] use of the airport [involved].

Section 5 [8]. An [Every] airport zoning map adopted by the commission shall remain in full force and effect until revised by the commission [pursuant to the administrative regulations of the commission].

RANDALL ROYER, Interim Chairman

MIKE HANCOCK, Secretary

D. ANN DANGELO, Asst. General Counsel

APPROVED BY AGENCY: September 14, 2012

FILED WITH LRC: September 18, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

November 27, 2012 at 11:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. 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: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for filing airport zoning maps for existing and planned airports under commission jurisdiction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform owners of airports subject to the jurisdiction of KAZC of the documents required to be filed with the commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 183.867 mandates that the commission require all airports subject to the jurisdiction established in KRS 183.861 file maps showing the airport and area surrounding the airport used for approach or landing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will update regulation language pursuant to changes in KRS 183.867.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the regulation to include a previous statutory revision to KRS 183.861 that expanded the types of airports under KAZC jurisdiction.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to conform with the statutory changes in KRS 183.861.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation defines the areas over which the commission has zoning jurisdiction. The amendment updates those jurisdictional areas in conformance with KRS 183.861.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will update the language to conform with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects airports subject to the jurisdiction of KAZC.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to perform any additional actions not already required. They are cur-

rently required to file an airport master plan and a map showing the airport and the surrounding areas used for approach and landing.

(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 fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation informs and clarifies requirements and updates the airports subject to the jurisdiction of KAZC in conformance with statutory changes.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with implementing this new administrative regulation.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. All airports subject to KAZC jurisdiction must submit a map and airport master plan with the commission.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Airport Zoning Commission (KAZC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 183.861, 183.867(2)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs are required or expected.

(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 amended regulation will not generate 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 amended regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? No costs are required or expected based on these amendments.

(d) How much will it cost to administer this program for subsequent years? No subsequent costs are anticipated.

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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Assistive Technology Loan Corporation (Amendment)

789 KAR 1:010. General eligibility criteria for assistive technology loans.

RELATES TO: KRS 151B.450, 151B.465

STATUTORY AUTHORITY: KRS 151B.465(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.465(9) requires the Board of Directors of the Kentucky Assistive Technology Loan Corporation to promulgate administrative regulations through the cabinet to establish and administer a program for providing low-interest loans to qualified borrowers through qualified lenders for the acquisition of assistive technology. This administrative regulation prescribes when, and under what conditions, assistive technology loans shall be provided, in order to distribute limited funds equitably over the population of qualified borrowers.

Section 1. Definitions. (1) "Debt-to-income ratio" means the ratio of all monthly installment payments to total monthly income.

(2) "KATLC" means the Kentucky Assistive Technology Loan Corporation.

(3) "Nonprofit organization" means an incorporated entity under the provisions of KRS 273.163 to 273.387 that is in good standing with the Kentucky Office of the Secretary of State.

Section 2. Loan Purposes. The board shall:

(1) Consider:

(a) A loan for the acquisition of assistive technology equipment if the equipment is essential to compensate for the limitations caused by the disability; or

(b) An additional loan to finance a repair or provide maintenance; and

(2) Depending on the availability of funds and the applicant's eligibility for a loan, include in the amount of the loan:

(a) The cost of an assistive technology service, including an assessment or training, if the service is directly related to the assistive technology device; or

(b) An extended service agreement or warranty.

Section 3. Eligible to Apply for a Low Interest Loan[Eligibility].

(1) Except as provided in subsection (2) of this section, to be eligible to apply for a low interest loan[~~from the board~~], an applicant shall:

(a) Be an individual who meets the definition of qualified borrower established in KRS 151B.450(6) with a disability that is not of a temporary, transient, or acute nature;

~~(b)[Have a debt-to-income ratio no greater than that stipulated in the agreement between the board and qualified lender pursuant to Section 10 of this administrative regulation; (c)]~~ Be of legal age and have the legal authority to enter into a contract; and

~~(c)[(d)]~~ Be a resident of Kentucky for at least six (6) continuous months prior to the date of application.

(2) To be eligible to apply for a low interest loan[~~from the board~~], a nonprofit organization shall:

(a) Provide assistive technology to an individual with disabilities who is a resident of Kentucky; and

(b) Affirm that, and explain how, the adaptive equipment will be used for a current or potential employee, client, customer, or other associated individual with disabilities as required by KRS 151B.450(6).

Section 4. Initial Verification of Disability. An applicant for an initial loan shall verify disability by furnishing one (1) or more of the following:

(1) A statement from a licensed medical professional indicating how the disability substantially affects one (1) or more major life activities as described in KRS 151B.450;

(2) Proof of enrollment in one of the following:

(a) State vocational rehabilitation program;

(b) Social Security Disability Insurance (SSDI);

(c) Medicare enrollment based on disability;

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

- (d) Medicaid enrollment based on disability;
- (e) Veterans Administration enrollment based on current disability;
- (f) Educational services enrollment under an individualized family service plan or individualized education plan; or
- (3) Other proof of a disability that affects a major life activity as required by KRS 151B.450(6).

Section 5. Required KATLC Application Information. The following material shall be required as part of the loan request:

- (1) Legal name, current address and telephone number, and Social Security number (if a nonprofit organization, the employer identification number shall substitute for the Social Security number);
- (2) Nature of relationship to a person with a disability (if applicant does not have a disability);
- (3) Nature of disability and how it affects one (1) or more major life activities as described in KRS 151B.450;
- (4) Description of the assistive technology being requested and how it will compensate for the limitations of a disability and improve the quality of life of an individual with a disability;
- (5) Amount of money requested including the cost for an extended warranty, ~~[insurance,]~~ necessary training, or other item requested to be included in the amount of the loan. An itemized price quote from the potential seller shall be attached;
- (6) Total current monthly income with sources;
- (7) Total monthly installment payments, which shall:
 - ~~(a) include the amount paid in rent, mortgage, credit card payments, or unsecured loans; and~~
 - ~~(b) Not include maintenance amounts for food and utilities;~~
- (8) A signed statement that all submitted information is truthful and accurate;
- (9) A signed waiver allowing the release of information about the individual between the board and the qualified lender;
- (10) In the case of a nonprofit organization, proof of that status as defined in Section 1(3)~~[1(2)]~~ of this administrative regulation.

Section 6. Loan Application Procedure. (1) A loan request shall:

- (a) Include as attachments all required information and documentation; and
- (b) Be submitted to the KATLC, 275 E Main Street Mail Drop 2-EK, Frankfort Kentucky 40621, 1-877-675-0195, [Office of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440.]
- (2) After review of the request, the board of directors shall require the applicant to obtain an evaluation from an assistive technology professional, medical professional or other professional if more information is needed for the board to make a decision.
- (3) An application shall include a quote for the total price of the equipment or service for which the loan is being requested. The board shall require the applicant to obtain additional price quotes if it considers the submitted quote to be unusually high, unless the applicant can demonstrate that the equipment is available from a single source.

(4) The applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan. ~~[If the board preapproves a loan, the applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan.]~~ The qualified lender shall ~~[may]~~ conduct a credit check of the applicant.

(5) The qualified lender may reject the loan application. The board may override the denial based upon the following criteria:

- (a) Medical debt;
- (b) Payment of current obligations;
- (c) Financial support from family;
- (d) Existence of co signer;
- (e) Down payment; and
- (f) No credit history or limited credit history.

(6) ~~KATLC~~~~(5)~~ The board shall notify the applicant of its decision in writing, or in appropriate alternative format as requested, within fifteen (15) days after the decision is made. ~~If an application~~

~~is denied, the reasons for the denial shall be specified based on eligibility requirements and loan requirements].~~

~~(7)(a) [(6)(a)]~~ If desired, an applicant who is aggrieved by a decision of the board shall petition the board for reconsideration, in writing or in appropriate alternative format, and may provide additional documentation related to credit history, income, or assistive technology that addresses the stated reasons for denial.

(b) The board shall:

- 1. Consider the new information;
- 2. Provide the applicant with an opportunity to be heard; and
- 3. Inform the applicant of its decision at the meeting or in writing or in appropriate alternative format within seven (7) days if the applicant is not present at the meeting. The decision of the board shall be final.

Section 7. General Loan Requirements. (1) The minimum amount of a loan shall be \$500 and the maximum amount of a loan shall be \$25,000, except that the maximum amount for home modifications shall be \$15,000.

(2) The period of a loan shall be from a minimum of one year to a maximum of ten years or the estimated life of a device, whichever is less. The loan period shall be congruent with the agreement between the board and the qualified lender pursuant to Section 10 of this administrative regulation.

(3) The assistive technology ~~that can~~~~[device shall]~~ be titled shall be titled in the name of the qualified borrower with the board or its agent as lien holder. ~~[If the board is supplying secondary funding, the board or its agent shall become the holder of a secondary encumbrance.]~~

(4) The board or the qualified lender may require a qualified borrower to insure the equipment for the remaining value of the loan.

(5) The qualified borrower shall be responsible for the repair or maintenance of the equipment. An additional loan may be considered to finance a repair or maintenance.

(6) An individual may ~~obtain~~~~[secure]~~ more than one (1) loan if the total amount of all loans do not exceed \$25,000.

(7) The qualified lender may require a down payment.

Section 8: Priority Consideration. An application shall be considered in the order in which it was received according to the following order of preference:

- (1) An individual with a disability or parent or legal guardian of a person with a disability who has no current loans through the board;
- (2) An individual with a disability or parent or legal guardian of a person with a disability who has one (1) or more existing loans through the board; and
- (3) A nonprofit organization.

Section 9. Confidentiality. The application and all submitted information shall be held confidential.

(1) ~~KATLC~~~~[A board member]~~ shall use an identification number for each application. Unless otherwise required, the name, Social Security number, address, telephone number, and electronic mail address of the applicant shall not be revealed.

(2) The board shall meet in closed session if discussing an appeal of an individual application and shall refer to an application in open session by its identification number.

(3) The secretary of the cabinet or a designee shall maintain access to all records relating to an application or loan.

Section 10. Agreement with a Qualified Lender. (1) In contracting with one (1) or more qualified lenders, the board shall give primary consideration to:

- (a) The lender's ability to provide loans statewide;
- (b) The most favorable interest rate available for technology loans;
- (c) The most favorable interest rate to be paid on corporation deposits; and
- (d) The funds to be made available for technology loans over and above the amount of corporation funds on deposit.

(2) A qualified lender shall:

- (a) Execute a written agreement with the board that establish-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

es the requirements and conditions for issuing a loan, ~~[including the required debt-to-income ratio and]~~ the length of the loan, ~~and procedures for collecting on delinquent or defaulted loans;~~ and

(b) Agree to abide by all administrative regulations pertinent to the corporation in relation to loans.

SHEILA LEVY, Chairperson

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, November 30, 2012 at 11:00 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than close of business Wednesday, November 21, 2012, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, November 30, 2012. 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: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration and regulation of Kentucky's Assistive Technology Loan Corporation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 151B.450-475.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's assistive technology program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's assistive technology program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: The proposed amendments are made to adapt the regulations to provide better guidance to individuals who are interested in obtaining a loan for assistive technology.

(b) The necessity of the amendment to this administrative regulation: The changes made to the regulation were needed to more clearly define what is expected of individuals that apply for and obtain a loan from the assistive technology program.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of obtaining a loan for the purchase of assistive technology.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more clearly defines to applicants and recipients what benefits they can obtain and the expectations of repaying the loan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Disabled individuals that seek to obtain a loan for the purchase of assistive technology.

(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 applicants and recipients will not have to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all disabled applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.450-475.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Similar to question (a) the regulations will prevent bad loans from being uncollectable and will therefore save more money each year.

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with administering this amendment. The bank that helps collect the loans will take a fee for their services but that will come out of the loan funds that are recovered. It will not be an active charge paid out by the program.

(d) How much will it cost to administer this program for subsequent years? See (c) immediately above.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It will not generate new revenue, but it will avoid loans from being uncollectable. Last year there were \$18,700 in defaults that could not be collected. If this regulation is amended, the amounts can be collected. Home modifications are proposed to be limited to \$15,000, which would have saved \$6,700 last year. Therefore, the agency may have saved \$25,000 had this amended administrative regulation been in place.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of HVAC
(Amendment)

815 KAR 8:060. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 198B.684, 198B.658, 198B.660, 198B.664, 198B.672[~~EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.684[~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.684 authorizes the board to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers.[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the requirements for approval of continuing education courses and providers.

Section 1. Requirements for Continuing Educational Provider Approval. (1) Continuing Education Providers shall either be a:

- (a) Trade Association with affiliation to the HVAC Trade;
- (b) Trade school;
- (c) College;
- (d) Technical school;
- (e) Business dedicated solely to providing continuing education and that provides at least one (1) course in each of the congressional districts quarterly;
- (f) HVAC Company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or
- (g) HVAC manufacturer or distributor that employs a full time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2)(a) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval.

(b) Registration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form HVAC 8, Application for Approval as a Continuing Education Course Provider for HVAC Licensure, provided by the department and shall include the following:

- (a) Company name;
- (b) Contact person;
- (c) Mailing address;
- (d) Email address;
- (e) Telephone number; and
- (f) Fax number.

(4) The department shall maintain a list of approved continuing education course providers.

(5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved, the provider shall distribute a questionnaire in the format provided by the department to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form HVAC 9, Application for Continuing Education Course for HVAC Licensure, for each course offered by the course provider.

(2)(a) An Application for Approval as a Continuing Education Course Provider for HVAC Licensure shall be submitted only by an approved provider registered with the department.

(b) Applications shall be submitted at least thirty (30)[~~sixty (60)~~] days prior to the course's offering.

(3) A continuing education course shall provide instruction in at least one (1) of the subject areas specified in 815 KAR 8:050, Section 1(3)(a) through (d) and Section 2(3)(a) through (d).

(4) The course application shall include the following:

- (a) Name of the course;
- (b) Name and registration number of the provider;
- (c) A course syllabus;
- (d) Name of the instructor or presenter along with his or her qualifications;
- (e) The amount of actual time needed to present the course;
- (f) The objectives of the course; and
- (g) A statement of the practicality of the course to the HVAC trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval.

(6) Course approval shall be valid for two (2) years from the date of department approval.

(7)(a) The department shall issue a course number for each approved course.

(b) The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) A provider shall submit to the department a quarterly schedule including dates and locations of courses by January 1, April 1, July 1, and October 1 annually.

(9) Providers may submit additional courses to their quarterly schedule if done at least thirty (30) days prior to the course offerings.

(10) The department shall receive notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of the Division of HVAC.

(11)[~~(10)~~] Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to scheduled classes unless the governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant has the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course.

(d) Providers shall not cancel a course with ten (10) or more registrants, unless it is the result of an emergency.

Section 3. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

- (b) An attendance sign-in and sign-out sheet; and
- (c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) A certificate of completion shall contain the following information about the individual participant:

1. Name;
2. Address;
3. License number;
4. Date of attendance; and
5. Course completed.

(c) One (1) copy of the certificate of completion shall be:

1. Sent to the department electronically;
2. Retained on file by the provider in compliance with subsection (1) of this section of this section; and
3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department may attend an approved continuing education course to ensure that the course meets the

stated objectives and that applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be revoked if the department determines that the provider:

- (1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;
- (2) Does not provide complete and accurate information in either the initial registration or in notification of changes to the information;
- (3) Advertises a course as being approved by the department prior to receiving approval; or
- (4) Fails to comply with the requirements of this administrative regulation.

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

- (a) Form HVAC 8, Application for Approval as a Continuing Education Course Provider for HVAC Licensure, January 2010; and
- (b) Form HVAC 9, Application for Continuing Education Course for HVAC Licensure, January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 11, 2012

FILED WITH LRC: October 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2012 at 10:00 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2012 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for approval of HVAC continuing education courses and continuing education providers.

(b) The necessity of this administrative regulation: KRS 198B.684 authorizes the Board of HVAC Contractors to adopt continuing education requirements for HVAC licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for approval as an HVAC continuing education course provider and the requirements for approval of HVAC continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets forth the requirements for continuing education providers and continuing education classes to gain approval as

authorized by KRS 198B.654 and 198B.684.

(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 give continuing education providers flexibility to better serve license holders by providing education on timely issues/changes regarding HVAC installations, inspections and permitting within the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: Updating requirements for continuing education providers will better serve the constituents of the Commonwealth and ensure the continuing education on the most timely of technological, regulatory and statutory information relating to heating, ventilation and air conditioning.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.684 authorizes the board to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers. The Board of HVAC Contractors reviewed and recommended these amendments at the regularly scheduled quarterly meeting in February of 2012.

(d) How the amendment will assist in the effective administration of the statutes: With the recommended amendments, continuing education classes can be offered which educate on the most up to date HVAC issues facing licensees in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, Division of HVAC, HVAC continuing education providers, HVAC licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: HVAC continuing education providers shall submit an application for approval as a provider and for each course to be administered by the provider. Additionally, the advanced notice for amending class schedules for HVAC continuing education courses is lessened thereby affording increased flexibility for providers to offer courses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to HVAC continuing education course providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include increased flexibility in scheduling HVAC continuing education courses which will be accepted towards annual continuing education requirements necessary for license renewal.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing HVAC funds will be utilized for the administration of approving HVAC continuing education providers and HVAC continuing education courses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish new fees nor

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

will it directly or indirectly increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. All HVAC continuing education course providers and HVAC continuing education courses will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC 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. This administrative regulation is authorized by KRS 198B.654 and 198B.684.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no new fees or creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulatory amendment will result in no new revenue or expenditures.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? The cost of administering the HVAC program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: There is no anticipated fiscal impact from this amended administrative regulation to state or local government.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention (Amendment)

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS [198B.060, 198B.062, 198B.070, 198B.080, 198B.090,] 198B.110, [198B.120, 198B.130,] 227.300, 227.320, 227.330, 227.990, 234.140

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) ~~authorizes[requires]~~ the ~~commissioner[executive director]~~ to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring against fire loss. ~~[EO-2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.]~~ This administrative regulation establishes the Kentucky Standards of Safety to ~~supplement[and supplements]~~ the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been ~~[satisfactorily]~~ corrected to the satisfaction of the inspecting

authority.

(2) "Distinct fire hazard" means a condition that poses a threat to life or property, including a condition likely to ~~[unreasonably]~~ inhibit escape from danger of fire or explosion. A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines[explosion because the property, or the practice or method of construction or operation, condition, or processes or materials being used do not afford adequate protection, since]:

(a) A fire, explosion, or asphyxiation is likely to occur;~~[or]~~

(b) ~~Conditions[It]~~ may provide a ready fuel supply to augment the spread or intensity of a fire or explosion;

(c) A building is vacant, unguarded and open to unauthorized entry;

(d) An accumulation of combustible dust, debris, or materials is present;

(e) Required exits or fire protection are in non-working condition or not present;

(f) Objects are placed or installed so as to interfere with exits or exit routes;

(g) Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;

(h) Electrical or mechanical systems or installations create a hazardous condition; or

(i) Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.

Methods of construction that met the uniform state building code requirements, as applicable, at the time of construction shall not be deemed a distinct fire hazard.

(3) "Fire protection system" is defined by KRS 198B.550(6).

(4) "NFPA" means the National Fire Protection Association.

(5)[(4)] "NICET" means the National Institute for Certification of Engineering Technologies.

(6) "Unsafe Building" means a building characterized by:

(a) Deficiency in means of egress;

(b) Danger to human life or public welfare by reason of illegal or improper use, occupancy, or maintenance;

(c) Non-compliance with construction codes in place at time of construction;

(d) Significant damage including as the result of:

1. Fire;

2. Explosion;

3. Natural disaster;

4. Neglect; or

5. Vandalism;

(e) Falling away, hanging loose, or loosening of siding, block, or other building material, appurtenance, or part thereof; or

(f) Existence of structurally unsafe conditions.

Section 2. Scope. (1) Applicability. This administrative regulation shall apply to all ~~buildings[property]~~ except one (1) and two (2) family dwellings.

(2) Enforcement.~~[This administrative regulation shall be enforced as follows:]~~

(a) State Fire Marshal. The State Fire Marshal shall:

1. Have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; and

2. Have exclusive jurisdiction over state-owned property and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.~~[or]~~

(b) Local fire chief. ~~Jurisdictions wherein a local fire chief is[4. Except as provided in subparagraph 2 of this paragraph, the local official] designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary except as provided in subparagraph (a)2. of this subsection.~~ 2. The State Fire Marshal shall have exclusive jurisdiction over state-owned property and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.]

Section 3. Existing Buildings and Conditions. (1)[Buildings and

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

conditions approved in accordance with the Kentucky Building Code, which is incorporated by reference in 815 KAR 7:120, shall apply as provided in this subsection:

(a) Minimum or maximum standard.

1.] The standards for the construction[~~of a building constructed~~] pursuant to 815 KAR 7:120,[~~the~~] Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

~~(2)[2. Methods of construction that meet the requirements of the Kentucky Building Code shall not be deemed a distinct fire hazard.~~

(b) New construction.

1. The design and construction of a new building to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code.

2. An alteration, addition, or change to the structure that is within the scope of the building code shall be made in accordance with the applicable code.

(c) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof without project plan review and approval in accordance with 815 KAR 7:120, Kentucky Building Code, except as specified in Chapter 34 therein[~~that has the potential to create a greater hazard to the public because of increased structural or fire loading, or inadequate exits for the number of occupants, without prior approval from the authority determined under Section 2 of this administrative regulation.~~].

(3)[(2)] Buildings and conditions approved under other codes.

(a) Buildings constructed prior to promulgation of the uniform state building code.[1. Pre-KBC buildings.] A building,[~~facility,~~] or portion thereof, which was constructed and approved prior to the effective date[~~dates~~] of the uniform state building code[Kentucky Building Code and this administrative regulation,] shall be maintained as constructed and approved.[~~previously permitted.~~]

2. A change to the construction of the building in excess of that required by the codes at the time of construction shall not be required if the building is used and maintained as originally approved.]

(b) Previous fire code. A building,[~~facility,~~] or portion thereof, which was inspected,[~~and~~] approved or accepted pursuant to the 1996 Kentucky Fire Prevention Code shall:

1. Be maintained as previously approved or accepted; and

2. Not be required to make a modification or change for so long as the building[~~if it~~] is maintained and used as previously accepted or approved.

(c) Buildings not occupied or used for one (1) year or more. Prior to occupancy, a building shall be subject to safety inspection by the State Fire Marshal or his designee to ensure that the structure is neither a distinct fire hazard or an unsafe structure.

(3) Distinct Fire Hazards[~~Hazardous materials, conditions, and buildings.~~].

(a) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property[~~reasonably~~] safe.

(b) The State Fire Marshal shall use the standards specified in this paragraph to identify and to order the correction of a distinct fire hazard acting[~~and shall act~~] in accordance with the procedures established in KRS Chapter 227 and Section 5 of this administrative regulation. In exercising authority granted, the following shall be applicable[~~, except those specifically excluded codes and references~~]:

1. NFPA 1, Uniform Fire Code, 2012[2006] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:

~~a.[NFPA 1. The following codes and references shall be excluded from NFPA 1 for purposes of this administrative regulation:~~

~~a. NFPA 70, National Electric Code®, 2005 Edition;~~

~~b.] NFPA 402, Guide for Aircraft Rescue and Fire Fighting Operation, 2002 edition;~~

~~b.[c.] NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 edition;~~

~~c.[d.] NFPA 1031, Standard for Profession Qualifications for Fire Inspectors and Plan Examiner, 2003 edition;~~

~~d.[e.] NFPA 5000, Building Construction and Safety Code, 2012[2006], edition;~~

~~e.[f.] Code reference 13.3.2.26[13.3.2.24.2], High Rise Buildings;~~

~~f.[g.] Code reference 13.3.2.8[13.3.2.6.1], Existing Assembly Occupancies; and~~

~~g.[h.] Code reference 13.6[13.6.1.2], Portable Extinguishers, which if required, shall be modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6[13.6.1.2]. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2012[2006] Edition;~~

2. NFPA 101, Life Safety Code, 2012[2006] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 101[~~The following codes and references shall be excluded from NFPA 101 for purposes of this administrative regulation:~~

~~a. NFPA 70, National Electrical Code®, 2005 Edition;~~

~~b. NFPA 5000, Building Construction and Safety Code, 2006 edition; and~~

~~c. Code reference 13.3.5.1, Extinguishment Requirements];~~

~~3. NFPA 70, National Electrical Code®, 2011[2008] Edition; and~~

~~4. 815 KAR 7:120, Kentucky Building Code.~~

(c)[4. The Kentucky Building Code, which shall apply to a new building and to an alteration, addition, or change of use in accordance with subsection (1) of this section;

5. Superseding provisions. If a provision of this administrative regulation establishes regulatory criteria different from the criteria established in a code specified in subparagraph 1 or 2 of this paragraph, the provisions of this administrative regulation shall supersede any provision incorporated by reference;

6.] Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting a copy.[~~copies; and~~

7. A condition, equipment, building, facility or portion thereof, or an alternative designed to comply with the intent of a code provision that has been accepted or approved in accordance with subsection (2) of this section shall not be considered a distinct fire hazard if it is maintained and used as accepted or approved.]

(4) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures that would exceed the requirements of the current edition of 815 KAR 7:120,[~~the~~] Kentucky Building Code, if the building were being newly constructed.

(5) Maintenance of equipment.

(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in accordance with the applicable NFPA referenced code and the manufacturer's recommendations[~~good working order~~].

(b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device installed[~~that exists~~] in a building without approval granted by the authority having jurisdiction[~~or facility~~].

(6) Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.

Section 4. Permits. (1) State permits required. A permit shall be required from the State Fire Marshal for[~~the following types of~~] installations:

(a) Elevator installations and alterations;

(b) Boiler installations and alterations; and

(c) flammable, combustible, and hazardous material storage vessel installations.

(2) Local permits allowed.

(a) A permit from a local government shall not be required

unless[~~it is~~] required by local ordinance.

(b) An inspection or permit fee, if applicable, shall be established within[~~stipulated in~~] the local adopting legislation.

Section 5. Enforcement of Violations. (1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation and the standards incorporated herein or other codes or ordinances under state or local jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency. The notice of deficiency shall state[~~deficiency, citing~~] the applicable code provision violated and specify the date by[~~specifying a time period in~~] which the required repairs or improvements shall be completed. Pursuant to KRS 227.336, corrective action shall be ordered remedied within a period of time not to exceed sixty (60) days.

(2) Service of notice. The written notice of deficiency shall be served personally or via certified U.S. Mail upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency. Proof of service shall be required to perfect service.

(3) Failure to correct deficiency. Any person who fails to correct a deficiency ordered to be remedied shall be subject to enforcement actions authorized in KRS 227.331.[~~(a) Except if an appeal is in process pursuant to Section 6 of this administrative regulation, each deficiency shall be considered a violation.~~

[~~(b) If a correction required in the notice of deficiency is not completed within the time specified, the appropriate legal proceedings to compel compliance shall be requested by the authority having jurisdiction.~~]

Section 6. Means of Appeal. (1) Appeals of orders issued by the State Fire Marshal[~~appeals~~].

(a) An appeal to the State Fire Marshal from a notice of deficiency issued by the Division of Fire Prevention shall be:

1.[~~an employee or deputy of the State Fire Marshal shall be~~] In writing; and

2. Received by the Division of Fire Prevention, State Fire Marshal[~~shall be requested~~] prior to the completion date specified in[~~required by~~] the notice of deficiency served.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal,[~~other appropriate~~] legal action shall[~~may~~] be instituted pursuant to KRS Chapter 227.

(2) Appeal of an order to remedy. Pursuant to KRS 227.380, the owner of the subject property may appeal to the State Fire Marshal within ten (10) days following receipt of the issued order.[~~Local appeals. If a local government adopts an ordinance for the enforcement of this administrative regulation, the appeal from a decision of the local fire chief shall be to the person or entity as provided by the ordinance.~~]

Section 7. Special Provisions. (1)[~~Temporary Occupancies. A change in use, subject to Section 3(1)(c) of this administrative regulation, shall not be prohibited if the building is being used for temporary purposes, in accordance with the requirements of this section.~~

(1) Time limit. The use of the building shall not exceed a total of thirty (30) days in a calendar year.

(2) Prior notice. The owner of the property shall notify the State Fire Marshal or local fire chief, in writing, of the proposed new use, stating the nature of the use of the building and the precise dates and times the building is to be occupied.

(3) Inspection. In the notification, the owner shall consent] to inspection and an opportunity for the inspection of the building shall be afforded to the State Fire Marshal or local fire chief upon request.

(4) Safety requirements. The property owner shall be responsible for maintaining the fire safety of the building and shall comply with the applicable provisions of this administrative regulation for the proposed use, as required by the State Fire Marshal or local fire chief.

Section 8. Special Provisions.

(1) Passenger elevator incidents.

(a) Notification of Chief Elevator Inspector. The owner of the building shall immediately notify the Chief Elevator Inspector of

every incident involving personal injury, persons rescued from a stalled elevator by emergency or maintenance personnel, or damage to the apparatus on, about, or in connection with a passenger elevator and shall afford the Chief Elevator Inspector every facility for investigating the incident.

(b) Discontinued use of elevator. If an incident involves the failure, breakage, damage, or destruction of a part of the apparatus or mechanism, it shall be unlawful to use the device until after an examination by the Chief Elevator Inspector is made and approval of the equipment for continued use has been granted.

(c) Removal of damaged parts. If an incident involves personal injury or damage to the apparatus, it shall be unlawful to remove a part of the damaged construction or operating mechanism of the elevator or other equipment from the premises until permission has been granted by the Chief Elevator Inspector. (2) Fire incident reporting. The fire chief or highest ranking fire department officer shall promptly notify the State Fire Marshal upon becoming aware of any of the following:

(a) A hazardous materials incident;

(b) Fire-related fatality (including a vehicle or home);

(c) Fire-related injury serious enough to become a fatality; or

(d) A fire involving major structural damage in the following buildings:

1. An institutional, educational, state-owned or state-leased, or high-hazard occupancy;

2. A business, mercantile, or industrial occupancy having a capacity over 100 persons;

3. An assembly occupancy having a capacity over 100 persons;

4. A place of religious worship with a capacity over 400 persons and more than 6,000 square feet; or

5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.

(2)[~~(3)~~] Fire protection systems testing and inspection.

(a) Reporting. Except as provided in paragraph (c) of this subsection, an inspection or test required by this administrative regulation, Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported to the owner by a person authorized or certified by the State Fire Marshal.

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72 as determined[~~and approved~~] by the State Fire Marshal.

2. If any violations are noted, the completed report[~~appropriate forms~~] shall be given to the owner and a copy forwarded to the State Fire Marshal within ten (10) working days of the date of the inspection.

(c) Reporting exceptions.

1. Portable fire extinguishers and single station smoke detectors may be inspected and tested by the property owner or property owner's agent.[~~A portable fire extinguisher or single station smoke detector inspection or test may be inspected and tested by the property owner and the owner's agent.~~]

2. Allowable reports by owners and owner agents[~~These reports~~] shall not be required to be filed with the State Fire Marshal, but shall be kept on file within the building and available for review upon request by the State Fire Marshal.

(d) Frequency. Periodic testing and inspection of each[~~a~~] fire suppression and each[~~or~~] alarm system shall be performed as follows:

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually;

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly by a Kentucky certified inspector for sprinkler systems and fire alarms, respectively; and

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the de-

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

partment[office] on a Form FPS 33-01, Application for Fire Alarm Systems Certification, [and for renewals on Form FPS 33-02] and shall:

a. (i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

(ii) Pass the examination for alarm inspector administered by an [approved] examination provider approved by the department;

b. Have had at least eighteen (18) months of experience in installation, repair, testing, or a combination thereof during the training, or instruction in fire alarm systems within the immediately prior five (5) year period immediately preceding application;

c. Pay an annual[a yearly] certification fee of fifty (50) dollars for each classification applied for[classification, which shall be valid until the inspector's birth month and renewed annually]; and

d. Submit a passport-sized color photograph with the application.

2. For renewals of fire alarm inspector certification, an applicant shall:

a. Submit completed Form FPS 33-02, Renewal Application for Fire Alarm Systems Certification, October 2012;

b. Pay an annual certification renewal fee of fifty (50) dollars for each classification held;

c. Submit a passport-sized color photograph with the renewal application; and

d. (i) Provide proof of[or renewal form; and e. (i) Have] six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) Provide proof of current NICET certification.

3.[2.] Penalties. An applicant shall be subject to penalties established in KRS 227.990 and may be denied certification or renewal for:[A person shall not:]

a. Failure of a certified fire alarm inspector[Fail] to conduct an inspection in accordance with the NFPA 72 standard;

b. Submission of[Submit] false inspection reports;

c. Performing[Conduct] inspections without first having been certified by the department[office] as a fire alarm inspector; or

d. Making[Make] a false or misleading statement on an application for certification or renewal.

Section 8[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) NFPA 1, "Uniform Fire Code", 2012[2006] edition;

(b) NFPA 101, "Life Safety Code", 2012[2006] edition;

(c) NFPA 70, "National Electrical Code®", 2011[2008] edition;

(d) FPS 33-01, "Application for Fire Alarm Systems Certification", October 2012[April 2006]; and

(e) FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", October 2012[April 2006].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: October 11, 2012

FILED WITH LRC: October 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2012, at 10:00 am, EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2012 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. Send written notification of intent to be heard at the public

hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes supplements the Kentucky Building Code (815 KAR 7:120) in matters of fire safety.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update materials incorporated by reference to current model standards relating to fire safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.300(1) requires the department to establish the Kentucky Standards of Safety which provide a reasonable degree of safety to human life against exigencies of fire and panic, as well as insure against fire loss.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation amendment updates fire safety standards for increased protection of citizens and property against fire loss within the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates fire safety standards, clarifies confusing language, and eliminates provisions which are in conflict with the Kentucky Building Code.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to maximize protection afforded citizens of the Commonwealth against safety hazards, particularly fire related hazards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.300 provides that the department may supplement the uniform state building codes to provide safety against fire, panic and fire loss.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes additional safety provisions specifically relating to the protection of citizens against fire related injuries and fire damages.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Fire Prevention, owners/operators of buildings, constituents, fire departments and chiefs authorized to carry out regulation's provisions.

(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: Building owners and operators will be impacted minimally by updating to the 2012 fire standards from the 2006 which updates to current fire safety technologies available.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with this amendment will depend upon whether a building owner has violations, mandatory annual inspections, change in use of an existing building or a combination of these.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliant buildings will benefit from the increased levels of protection against fire related loss and damages.

(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 anticipated to the

Department as a result of the updates in this amendment.

(b) On a continuing basis: Costs for subsequent years are anticipated to remain consistent with previous years since implementation of the Standards of Safety.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds established for the Division of Fire Prevention for the state's participation; on the local level, from local funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation does not amend the fees previously established.

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Fire Prevention and local governments will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.300(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. The Department anticipates revenues of approximately \$27,000 from the existing certification program (currently 542 active fire alarm sprinkler inspector certifications). The Department receives no revenues from the general inspections performed to ensure life safety from fire and fire hazards.

(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 the revenues generated will remain fairly constant in subsequent years.

(c) How much will it cost to administer this program for the first year? The costs to administer the amended administrative regulation are constant from prior years as the updating of codes does not impact the administrative costs of the inspection programs utilizing the standards of safety. The only potential impact to enforcement penalties with the updates would potentially be for code books.

(d) How much will it cost to administer this program for subsequent years? The costs for enforcing the standards of safety are anticipated to remain constant as the number of inspections is a stable number.

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

Revenues (+/-): Estimated \$27,000

Expenditures (+/-): Estimated \$27,000

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Commissioner's Office (Amendment)

907 KAR 3:170. Telehealth consultation coverage and reimbursement.

RELATES TO: KRS 12, 205.510(15), 194A.060, 194A.125, 205.559, 205.560, 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), 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 to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth consultations and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies[provisions] relating to telehealth consultations in accordance with KRS 205.559. The coverage policies in this administrative regulation shall apply to a managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but shall be authorized to reimburse as the department reimburses if it chooses to do so.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN"[practitioner] or "ARNP" is defined by KRS 314.011(7).

(2) "Certified nutritionist" is defined by KRS 310.005(12).

(3) "Chiropractor" is defined by KRS 312.015(3).

(4) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.

(5) "Dentist" is defined by KRS 313.010(10) ["CPT-code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology].

(6) "Department" means the Department for Medicaid Services or its designated agent.

(7) "Diabetes self-management education" means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.

(8) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient["Dietitian" is defined by KRS 310.005(3)].

(9) "Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a telehealth consultation in real time, during the visit, from a provider at a telehealth hub site.

(10) "Face-to-face" means:

(a) In person; and

(b) Not via telehealth.

(11) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(12)[(44)] "GT modifier" means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS).[(42)] "Health care common procedure coding system" or "HCPCS" means a set of health care procedure codes based on the American Medical Association's Current Procedural Terminology (CPT).]

(13) "Health care provider" means a;

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(a) Currently enrolled Medicaid provider in accordance with 907 KAR 1:672;

(b) Currently participating Medicaid provider in accordance with 907 KAR 1:671; and

(c) 1. Licensed physician;

2. Licensed advanced practice registered nurse;

3. Physician assistant working under a supervising physician;

4. Licensed dentist;

5. Licensed oral surgeon;

6. A psychologist;

a. With a license in accordance with KRS 319.010(5); and

b. With a doctorate degree in psychology;

7. Licensed clinical social worker;

8. Chiropractor;

9. Licensed optometrist; or

10. Community mental health center[Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672, who is a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision;

(d) Licensed dentist or oral surgeon;

(e) Community mental health center;

(f) Psychologist with a license in accordance with KRS 319.010(5);

(g) Licensed clinical social worker;

(h) Chiropractor; or

(i) Licensed optometrist].

(14) "Hub site" means a telehealth site:

(a) Where the telehealth provider performs telehealth; and

(b) That is considered the place of service.

(15) ["KenPAC" means the Kentucky Patient Access and Care System.

(16) "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.

(17) "Legally-authorized representative" means a Medicaid recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(16) [(48)] "Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335.100.

(17) [(49)] "Licensed dietitian" is defined by KRS 310.005(11).

(18) [(20)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(19) [(21)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(20) [(22)] "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(21) "National Provider Identifier" or "NPI" means a standard unique health identifier for health care providers which:

(a) Is required by 42 C.F.R. 455.440; and

(b) Meets the requirements of 45 C.F.R. 162.406.

(22) [(23)] "Occupational therapist" is defined by KRS 319A.010(3).

(23) [(24)] "Optometrist" means an individual licensed to engage in the practice of optometry in accordance with KRS 320.210(2).

(24) [(25)] "Physical therapist" is defined by KRS 327.010(2).

(25) [(24)] "Physician" is defined by KRS 311.550(12).

(26) [(27)] "Physician assistant" is defined by KRS 311.840(3).

(27) [(28)] "Psychiatric medical resident" means an individual who:

(a) Possesses a special faculty license in accordance with KRS 311.550(29);

(b) Meets the qualification for licensure requirements established in KRS 311.571(1) or (2); and

(c) Is a resident as defined by 42 C.F.R. 415.152.

(29) "Psychiatric registered nurse" means a registered nurse who:

(a) Has a master of science in nursing with a specialty in psychiatric or mental health nursing;

(b) Has a bachelor of science in nursing and at least one (1)

year of experience in a mental health setting;

(c) Is a graduate of a three (3) year educational program and has at least two (2) years of experience in a mental health setting;

(d) Has an associate degree in nursing and at least three (3) years of experience in a mental health setting; or

(e) Has any level of education with American Nursing Association (ANA) certification as a psychiatric or mental health nurse. (30) "Psychologist" is defined by KRS 319.010(8).

(28) [(31)] "Registered nurse" is defined by KRS 314.011(5).

(29) [(32)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(30) [(33)] "Spoke site" means a telehealth site where the recipient receiving the telehealth consultation is located.

(31) [(34)] "Telehealth consultation" is defined by KRS 205.510(15).

(32) [(35)] "Telehealth provider" means a:

(a) Currently enrolled Medicaid provider in accordance with 907 KAR 1:672;

(b) Currently participating Medicaid provider in accordance with 907 KAR 1:671; and

(c) Medicaid provider performing a telehealth consultation at a hub site.

(33) [Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672, performing a telehealth consultation at a hub site.

(36)] "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125.

(34) [(37)] "Telepresenter" means an individual operating telehealth equipment at a spoke site to enable a recipient to receive a telehealth consultation.

(35) [(38)] "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth consultation.

(36) [(39)] "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time telehealth consultation to take place between a recipient and a telepresenter at the spoke site and a telehealth provider at the hub site.

Section 2. General Policies. (1) A telehealth consultation shall not be reimbursed by the department if:

(a) It is not medically necessary;

(b) The equivalent service is not covered by the department if provided in a face-to-face setting;

(c) It requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371;

(d) The provider of the telehealth consultation is:

1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

3. Not in good standing with the Medicaid program;

4. Currently listed on the Kentucky DMS List of Excluded Providers; or

5. Currently listed on the United States Department of Health and Human Services, Office of Inspector General List of Excluded Individuals and Entities; or

(e) It is provided by a practitioner or provider not recognized or authorized by the department to provide the telehealth consultation or equivalent service in a face-to-face setting.

(2) A telehealth provider shall:

(a) Be an approved member of the Kentucky Telehealth Network; and

(b) Comply with the standards and protocols established by the Kentucky Telehealth Board.

(3)(a) A telehealth consultation referenced in Section 3 or 4 of this administrative regulation shall be provided to the same extent and with the same coverage policies and restrictions that apply to the equivalent service if provided in a face-to-face setting.

(b) If a telehealth coverage policy or restriction is not stated in this administrative regulation but is stated in another administrative regulation within Title 907 of the Kentucky Administrative Regulations, the coverage policy or restriction stated elsewhere within

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

Title 907 of the Kentucky Administrative Regulations shall apply.

(4) A telehealth consultation shall be subject to utilization review for:

- (a) Medical necessity;
- (b) Compliance with this administrative regulation; and
- (c) Compliance with applicable state or federal law.

(5) A telehealth consultation shall require:

- (a) The use of two (2) way interactive video;
- (b) A referral by a health care provider; and
- (c) A referral by a recipient's lock-in provider if the recipient is

locked in pursuant to:

- 1. 42 C.F.R. 431.54; and
- 2. 907 KAR 1:677.

Section 3. Telehealth Consultation Coverage in a Setting That is Not a Community Mental Health Center. (1) The policies in this section of this administrative regulation shall apply to a telehealth consultation provided in a setting that is not a community mental health center.

(2) The following telehealth consultations shall be covered by the department as follows:

(a) A physical health evaluation and management consultation provided by:

- 1. A physician;
- 2. An advanced practice registered nurse;
- 3. An optometrist; or
- 4. A chiropractor;

(b) A mental health evaluation and management service provided by:

- 1. A psychiatrist;
- 2. A physician in accordance with the limit established in 907 KAR 3:005;
- 3. An APRN in accordance with the limit established in 907 KAR 1:102;

- 4. A psychologist:
 - a. With a license in accordance with KRS 319.010(5);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and
 - d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

- 5. A licensed professional clinical counselor:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

- 6. A licensed clinical social worker:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

- 7. A licensed marriage and family therapist:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(c) Individual or group psychotherapy provided by:

- 1. A psychiatrist;
- 2. A physician in accordance with the limit established in 907 KAR 3:005;

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist:

- a. With a license in accordance with KRS 319.010(5);
- b. With a doctorate degree in psychology;
- c. Who is directly employed by a psychiatrist; and
- d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

- 5. A licensed professional clinical counselor:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

- 6. A licensed clinical social worker:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

- 7. A licensed marriage and family therapist:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed dietitian is directly employed;

(d) Pharmacologic management provided by:

1. A physician in accordance with the limit established in 907 KAR 3:005;

2. An APRN in accordance with the limit established in 907 KAR 1:102; or

3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:

- 1. A psychiatrist;
- 2. A physician in accordance with the limit established in 907 KAR 3:005;
- 3. An APRN in accordance with the limit established in 907 KAR 1:102;

- 4. A psychologist:
 - a. With a license in accordance with KRS 319.010(5);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and
 - d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

- 5. A licensed professional clinical counselor:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

- 6. A licensed clinical social worker:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the

encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed dietitian is directly employed;

(f) Individual medical nutrition therapy consultation services provided by a:

1. Licensed dietitian:

a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, or the Department for Public Health; and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally qualified health care center, rural health clinic, or primary care center by whom the licensed dietitian is directly employed; or

(ii) Department for Public Health if the licensed dietitian works for the Department for Public Health;

2. Certified nutritionist:

a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, or the Department for Public Health; and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally qualified health care center, rural health clinic, or primary care center by whom the licensed dietitian is directly employed; or

(ii) Department for Public Health if the certified nutritionist works for the Department for Public Health;

(g) Individual diabetes self management training consultation if:

1. Ordered by a:

a. Physician;

b. APRN directly employed by a physician;

c. Physician assistant directly employed by a physician;

2. Provided by a:

a. Physician;

b. APRN directly employed by a physician;

c. Physician assistant directly employed by a physician;

d. Registered nurse directly employed by a physician;

e. Licensed dietitian directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, or the Department for Public Health; and

3. The telehealth consultation is billed under the:

a. NPI of the physician, federally qualified health care center, rural health clinic, or primary care center by whom the licensed dietitian is directly employed; or

b. Department for Public Health if the certified nutritionist works for the Department for Public Health;

(h) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a physician;

1. If direct physician contact occurs during the evaluation;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(i) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a hospital's outpatient department;

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

(j) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a home health agency;

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(k) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a physician;

1. If direct physician contact occurs during the evaluation;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(l) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a hospital's outpatient department;

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

(m) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a home health agency;

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(n) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a physician;

1. If direct physician contact occurs during the evaluation or treatment;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(o) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a hospital's outpatient department;

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

(p) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a home health agency;

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(q) A neurobehavioral status examination provided by:

1. A psychiatrist;

2. A physician in accordance with the limit established in 907 KAR 3:005; or

3. A psychologist;

a. With a license in accordance with KRS 319.010(5);

b. With a doctorate degree in psychology; and

c. Who is directly employed by a physician or a psychiatrist;

(i) In accordance with the limits established in 907 KAR 3:005;

(ii) If the physician or psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(iii) If the telehealth consultation is billed under the NPI of the physician or psychiatrist by whom the psychologist is directly employed; or

(r) End-stage renal disease monitoring, assessment, and counseling consultations for home dialysis recipients provided by:

1. A physician directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or

2. An APRN directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI.

Section 4. Telehealth Consultation Coverage in a Community Mental Health Center. (1) The policies in this section of this administrative regulation shall apply to a telehealth consultation provided via a community mental health center.

(2) The limits, restrictions, exclusions, or policies:

(a) Which apply to a service provided face-to-face in a community mental health center shall apply to a telehealth consultation or service provided via telehealth via a community mental health center; and

(b) Established in 907 KAR 1:044 shall apply to a telehealth consultation or service provided via:

1. Telehealth; and

2. A community mental health center.

(3) The department shall not reimburse for a telehealth consul-

tation provided via a community mental health center if:

(a) The consultation is not billed under the community mental health center's national provider identifier; or

(b) The person who delivers the telehealth consultation is not directly employed by the community mental health center.

(4) The following telehealth consultations provided via a community mental health center shall be covered by the department as follows:

(a) A psychiatric diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(b) A psychological diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. A psychologist;

(i) With a license in accordance with KRS 319.010(5); and

(ii) With a doctorate degree in psychology; or

(c) Pharmacologic management provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A physician;

b. A psychiatrist; or

c. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057.

Section 5. [Telehealth Coverage For Telehealth Not Provided in a Community Mental Health Center.] (1) The department shall reimburse for the following telehealth consultations not provided via a community mental health center in accordance with the following provisions:

(a) Wound care with a CPT code of 97601 or 97602 provided by a physician or advanced registered nurse practitioner;

(b) A service, provided by a physician, chiropractor, optometrist, or ARNP, which has an evaluation and management code of 99201 through 99215;

(c) A service, provided by a physician, chiropractor, or ARNP, with an evaluation and management code of 99241 through 99255;

(d) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through 90802 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician; or

7. An ARNP;

(e) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed

by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(f) Outpatient individual interactive psychotherapy with a CPT code of 90810 through 90815 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(g) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(h) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(i) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during

the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(j) Family therapy with a CPT code of 90847 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(k) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(l) Psychiatric medication management with a CPT code of 90862 if provided by:

1. A psychiatrist;

2. A physician not to exceed four (4) encounters per recipient per year; or

3. An ARNP not to exceed four (4) encounters per recipient per year;

(m) Interpretation of data to family or others with a CPT code of 90887 if provided by:

1. A psychiatrist;

2. A physician not to exceed four (4) encounters per recipient per year; or

3. An ARNP not to exceed four (4) encounters per recipient per year;

(n) A dialysis related service with a CPT code of 90918 through 90925 if provided by a physician;

(o) Initial visit with a CPT code of 99304 through 99305 to a new or established patient in a nursing home if provided by a physician or ARNP;

(p) Subsequent visit with a CPT code of 99308 through 99310

to a patient in a nursing home if provided by a physician or ARNP;

(q) Discharge of a patient from a nursing home with a CPT code of 99315 if provided by a physician or ARNP;

(r) Speech therapy evaluation with a CPT code of 92056 if provided by a speech-language pathologist;

(s) Speech therapy treatment with a CPT code of 92057 if provided by a speech-language pathologist;

(t) Occupational therapy with a CPT code of 97003 if provided by an occupational therapist;

(u) Physical therapy with a CPT code of 97001 if provided by a physical therapist;

(v) Individual medical nutrition therapy with an HCPCS code of G0270 or a CPT code of 97802 through 97804 if provided by a licensed dietitian or certified nutritionist;

(w) End stage renal disease services with an HCPCS code of G0308, G0309, G0311, G0314, G0315, G0317, or G0318 if provided by a physician or ARNP;

(x) A neurobehavioral status exam with a CPT code of 96116 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year; or

(y) Patient diabetes self-management education regarding diabetes care planning including nutrition, exercise, medication, or blood glucose testing equipment:

1. If ordered by the physician, advanced registered nurse practitioner, or physician assistant who is managing the recipient's diabetic condition;

2. If provided by a registered nurse or dietician; and

3. With a corresponding:

a. HCPCS code of G0108 or G0109; or

b. CPT code of 97802.

(2) The department shall not reimburse for a telehealth consultation if the consultation:

(a) Is not medically necessary; or

(b) Requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.

(3) A telehealth consultation shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider;

(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 3. Coverage of Telehealth Provided by a Community Mental Health Center:

(1) The department shall reimburse for the following telehealth consultation provided via a community mental health center in accordance with the following provisions:

(a) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through 90802 if provided by:

1. A psychiatrist;

2. A physician;

3. A psychologist with a license in accordance with KRS 319.010(5);

4. A licensed marriage and family therapist;

5. A licensed professional clinical counselor;

6. A psychiatric medical resident;

7. A psychiatric registered nurse;

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(b) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(c) Outpatient individual interactive psychotherapy with a CPT code of 90810 through 90815 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(d) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(e) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(f) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(g) Family therapy with a CPT code of 90847 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(h) Family or group psychotherapy with a CPT code of 90849

through 90857 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(i) Psychiatric medication management with a CPT code of 90862 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychiatric medical resident; or
4. An ARNP;
(j) Interpretation of data to family or others with a CPT code of 90887 if provided by:
1. A psychiatrist;
2. A physician; or
3. An ARNP; or
(k) A neurobehavioral status exam with a CPT code of 96116 if provided by:
1. A psychiatrist; or
2. A psychologist with a license in accordance with KRS 319.010(5).
(2) The department shall not reimburse for a telehealth consultation if the consultation:
(a) Is not medically necessary; or
(b) Requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.
(3) A telehealth consultation shall require:
(a) The use of two (2) way interactive video;
(b) A referral by a health care provider;
(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and
(d) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.
Section 4.] Reimbursement. (1) The department shall reimburse a telehealth provider for a telehealth consultation:
(a) Except for a telehealth consultation provided by an APRN[ARNP] or CMHC, an amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3:010;
(b) If a CMHC, in accordance with 907 KAR 1:045; or
(c) If provided by an APRN[ARNP], an amount equal to the amount paid for a comparable in person service in accordance with 907 KAR 1:104.
(2) A telehealth provider shall bill for a telehealth consultation using the appropriate[evaluation and management CPT or HCPCS code as specified in Section 2 or 3 of this administrative regulation along with the corresponding] two (2) letter "GT" modifier.
(3) The department shall not require the presence of a health care provider requesting a telehealth consultation at the time of the telehealth consultation unless it is requested by a telehealth provider at the hub site.
(4) The department shall not reimburse for transmission costs.
Section 6.[5.] Confidentiality and Data Integrity. (1) A telehealth consultation shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth consultation information.
(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth consultation.
(3) A provider of a telehealth consultation shall implement confidentiality protocols that include:
(a) Identifying personnel who have access to a telehealth transmission;
(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and
(c) Preventing unauthorized access to a telehealth transmission.
(4) A provider's protocols and guidelines shall be available for

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

inspection by the department upon request.

Section 7.[6.] Informed Consent. (1) Before providing a telehealth consultation to a recipient, a health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth consultation at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth consultation that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth consultation as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality ~~policies~~provisions;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth consultation and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth consultation.

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally-authorized representative upon request.

(3) The requirement to obtain informed consent before providing a telehealth consultation shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally-authorized representative is unavailable.

Section 8.[7.] Medical Records. (1) A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth consultation provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 - 434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. 164.530(j).

(3) A medical record of a telehealth consultation shall be maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

(4) Documentation of a telehealth consultation by the referring health care provider shall be included in the recipient's medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth consultation and a progress note by the referring health care provider if present at the spoke site during the telehealth consultation;

(b) The location of the hub site and spoke site;

(c) A copy of the signed informed consent form;~~and~~

(d) Documentation supporting the medical necessity of the telehealth consultation; and

(e) The referral order and complete information from the referring health care provider who requested the telehealth consultation for the recipient.

(5)(a) A telehealth provider's diagnosis and recommendations resulting from a telehealth consultation shall be documented in the recipient's medical record at the office of the health care provider who requested the telehealth consultation.

(b) A telehealth provider shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation to the referring health care provider.

Section 9.[8.] Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy~~[provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision].~~

Section 10.[9.] Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department-written determination as to the application of this administrative regulation in accordance with 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HANES, Secretary

APPROVED BY AGENCY: October 8, 2012

FILED WITH LRC: October 9, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2012 at 9:00 a.m. in the Cabinet for Health and Family Services, Health Services Auditorium A, 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2012 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. The 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation shall apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO shall not be required to reimburse pursuant to this administrative regulation, but shall be authorized to do so if it chooses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.

(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 DMS telehealth policies.

(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 DMS telehealth policies.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes the administrative regulation consistent with policies approved by the Centers for Medicare and Medicaid Services (CMS) in order to ensure federal funding for the policies. The amendments include paring the telehealth service categories and clarifying provider and practitioner types authorized

to perform telehealth services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with policies approved by CMS (for federal funding.)

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS; thus, ensuring federal funding for the policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS; thus, ensuring federal funding for the policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently fifty-nine (59) telehealth sites in the Kentucky telehealth network. The provider network is primarily comprised of hospitals/medical centers but also includes health departments and physicians' offices among others.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be reimbursed for a telehealth consultation, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth consultations in compliance with this administrative regulation will be reimbursed for services rendered.

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

(a) Initially: DMS anticipates that the amendment will be budget neutral. For information purposes, in state fiscal year (SFY) 2011 (July 1, 2010 through June 30, 2011), DMS paid \$345,221.13 in claims for services provided via telehealth. In SFY 2012 DMS's payment for claims dropped as expected due to the implementation of managed care. In SFY DMS paid \$149,190.18 in claims for services provided via telehealth. For the period spanning November 1, 2011 through June 30, 2012 (DMS implemented managed care on November 1, 2011), DMS's managed care organizations paid \$170,547.65 in claims for services provided via telehealth.

(b) On a continuing basis: DMS anticipates that the amendment will be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund 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: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Limits imposed on given services and providers vary in order to mirror the same limits imposed on providers and services when provided in a face-to-face setting. This is necessary to ensure that telehealth coverage does not exceed what the Medicaid program covers in a face-to-face setting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520, 205.559

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will be budget neutral. For information purposes, in state fiscal year (SFY) 2011 (July 1, 2010 through June 30, 2011), DMS paid \$345,221.13 in claims for services provided via telehealth. In SFY 2012 DMS's payment for claims dropped as expected due to the implementation of managed care. In SFY DMS paid \$149,190.18 in claims for services provided via telehealth. For the period spanning November 1, 2011 through June 30, 2012 (DMS implemented managed care on November 1, 2011), DMS's managed care organizations paid \$170,547.65 in claims for services provided via telehealth.

(d) How much will it cost to administer this program for subsequent years? DMS expects that the amendment will be budget neutral.

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:

NEW ADMINISTRATIVE REGULATIONS

**General Government Cabinet
Kentucky Applied Behavior Analysis Licensing Board
(New Administrative Regulation)**

201 KAR 43:050. Requirements for supervision.

RELATES TO: KRS 319C.050(1) and 319C.060(2)(a)-(d)
STATUTORY AUTHORITY: KRS 319C.060(2)(a)-(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

Section 1. Definitions. (1) "Direct supervision" means in-person interactions between the supervisor and the licensee under his or her supervision which includes direct observation of actual service provision to individuals.

(2) "General supervision" means interactions between the supervisor and the licensee under his or her supervision involving real time visual and auditory contact, conducted in-person or via electronic means.

Section 2. Supervisor Qualifications. (1) Only a behavior analyst who has been certified with the Behavior Analyst Certification Board and are in good standing may provide supervision to a licensed assistant behavior analyst, a temporarily licensed behavior analyst, or a temporarily licensed assistant behavior analyst.

(2) Behavior analysts functioning as supervisors shall meet all supervisory qualifications of the Behavior Analyst Certification Board.

Section 3. Supervisor Responsibilities. (1) Except as provided in Section 16 of this administrative regulation, a supervisory arrangement shall be submitted to the board using the Application for Licensure Form, with the supervisor and the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst petitioning the board in writing.

(2) The supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement by submitting an updated Annual Supervisory Plan no later than thirty (30) days after a change in the effective date of the arrangement or change.

Section 4. (1) The supervisor shall make all reasonable efforts to be assured that the practice of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst is in compliance with this administrative regulation. The supervisor shall include review, discussions, and recommendations focusing on: case background information; planned behavioral assessment procedures; assessment outcomes; data collection procedures; intervention procedures and materials; intervention outcome data; modifications of intervention procedures; ethical issues associated with behavior change services or employment; and professional development needs and opportunities.

(2) The supervisor shall report to the board an apparent violation of KRS 319C on the part of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to function in the practice as an and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst in a competent manner.

(4) The supervisor shall control, direct or limit the behavior-analytic duties performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor as appropriate to insure that these duties are competently performed.

(5) The supervisor of record shall be responsible for the behavior-analytic duties of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor. If the board initiates an investigation concerning a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor, the investigation shall include the supervisor of record.

(6) For each person supervised, the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not fewer than six (6) years after the last date of supervision.

Section 5. (1) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(2) The board may require additional supervised practice if recommended by the supervisor on a licensee's Annual Supervisory Plan or Annual Report of Supervision.

(3) The supervisor shall provide reports to the board of the supervision of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor according to the schedule established in the following subsections.

(a) A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a report every two (2) years on the anniversary of the date of licensure as a licensed assistant behavior analyst.

(b) A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst.

(c) A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a report annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst.

(4) The report shall be submitted on the Annual Report of Supervision which shall include:

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

(b) An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses; and

(c) Any other information which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

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

(2) A request to have more than two (2) supervisors at one (1) time shall be subject to board approval and shall be submitted by new applicants on the licensure application and the Annual Supervisory Plan and by existing licensees on the Annual Supervisory Plan, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 7. If a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor is a behavior analyst with less than five (5) years of full-time, post-certification practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

- (1) Read and countersign all assessments;
- (2) Review treatment plans, notes and correspondence on an as-needed basis to assess the competency of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to render applied behavior analytic services;
- (3) Jointly establish a supervisory plan with the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:
 - (a) Be updated or revised and submitted to the board with the regular report of supervision;
 - (b) Include intended format, and goals to be accomplished through the supervisory process; and
 - (c) Include methods that the supervisor and the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;
- (4) Have general supervision of the work performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor at least twice per month;
- (5) Have direct supervision of the work performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor at least once every three (3) months;
- (6) Have direct knowledge of the size and complexity of the caseload for each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor;
- (7) Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor;
- (8) Have knowledge of the techniques being used by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst;
- (9) Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 8. If the licensed assistant behavior analyst or temporarily licensed behavior analyst is a behavior analyst with more than five (5) years of full-time, post-certification practice, or its equivalent, the supervisor of record shall:

- (1) Review and countersign assessments as needed or appropriate;
- (2) Review treatment plans, notes, and correspondence as needed or appropriate;
- (3) Jointly establish a supervisory plan with each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:
 - (a) Be updated or revised and submitted to the board with the regular report of supervision;
 - (b) Include intended format, and goals to be accomplished through the supervisory process; and
 - (c) Include methods that the supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory

process;

- (4) Have general supervision of the work performed by each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor at least once per month;
- (5) Have direct supervision of the work performed by each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor at least twice a year;
- (6) Have direct knowledge of the size and complexity of the caseloads for each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor;
- (7) Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst or temporarily licensed behavior analyst;
- (8) Have knowledge of the techniques being used by each licensed assistant behavior analyst or temporarily licensed behavior analyst; and
- (9) Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 9. Supervision Requirements. (1) All licensed assistant behavior analysts shall meet these supervision requirements, even if they are not currently providing behavior analytic services. If not currently providing behavior analytic services, supervision may focus on guiding the development and maintenance of the licensed assistant behavior analyst's professional knowledge and skills and remaining current with the professional literature in the field.

(2) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with continuing education requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the applicant did not practice.

Section 10. Supervision for Part-Time Practice. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

Section 11. Supervisory Changes. (1) Upon a change of supervisor an updated Annual Supervisory Plan shall be submitted by the supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to the board for approval. This plan may require additional supervision than was previously approved by the board.

(2) Upon termination of the supervision relationship, the final Annual Report of Supervision shall be submitted to the board within thirty (30) days of the termination.

Section 12. Responsibilities of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst. The licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall:

- (1) Keep the supervisor adequately informed at all times of his or her activities and ability to function;
- (2) Seek supervision as needed in addition to a regularly scheduled supervisory session;
- (3) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;
- (4) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 5 of this administrative regulation; and
- (5) Report to the board any apparent violation of KRS 319C on the part of the supervisor.

Section 13. Identification of Provider in Billing. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the

associate behavior analyst, temporarily licensed behavior analyst, trainee, or other provider and supervised by the licensed behavior analyst.

Section 14. Disciplinary Procedures and Supervision of a Disciplined License Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined license holder for the period of time defined by the final order or settlement agreement conferring the discipline.

(2) When specified by the final order or settlement agreement, the disciplined license holder shall be responsible for paying the costs of supervision.

(3) The supervisor shall:

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

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

1. Summarize the actions and concerns of the board;

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

3. Develop a specific plan of supervision; and

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

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

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

(e) Make all reasonable efforts to insure that the disciplined license holder's practice is in compliance with KRS Chapter 319C and 201 KAR Chapter 43;

(f) Report to the board any apparent violation of KRS 319C on the part of the disciplined license holder;

(g) Immediately report to the board, in writing, a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of a licensed behavior analyst in a competent manner;

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

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

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

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

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and

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

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

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

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined license holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 15. Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising licensed behavior analyst from a list provided by the board;

(2) Provide the supervising licensed behavior analyst with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising licensed behavior analyst is

provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board and has immunity commensurate with that of a board member;

(4) Provide the supervising licensed behavior analyst with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:

(a) State the name of the supervising licensed behavior analyst; and

(b) Specify that the disciplined license holder shall meet with the supervising licensed behavior analyst and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising licensed behavior analyst and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising licensed behavior analyst and disciplined license holder shall continue to meet;

(8) Remain available to the supervising licensed behavior analyst to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising licensed behavior analyst;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising licensed behavior analyst and the disciplined license holder at the end of the term of supervision to summarize the supervision.

Section 16. Graduate Training. Applied behavior analysis graduate students. Graduate-level applied behavior analysis students who are providing services in mental health care settings including independent practice settings shall:

(1) Be supervised by a behavior analyst licensed by the board in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify his or her status as unlicensed trainees to all clients and payors;

(4) Give to all clients and payors the name of the licensed behavior analyst responsible for his or her work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of his or her university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual Report of Supervision", October 2012; and

(b) "Annual Supervisory Plan", October 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

SHELLI DESKINS, Chair

APPROVED BY AGENCY: September 24, 2012

FILED WITH LRC: October 11, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2012 at 8:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing

may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012 at 11:59 pm ET. 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: Lindsey Lane, Board Administrator, Kentucky Applied Behavior Analyst Licensing Board, PO Box 1370, Frankfort, Kentucky 40602

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes supervision requirements for Applied Behavior Analysts.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 319C.060(2)(a).

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying requirements for supervision of licensees as required by statute.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately forty-three (43) individuals are licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will be not be impacted but new entrants to the field at the level of assistant will be required to comply with supervision requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(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 licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The

amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Applied Behavior Analyst Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(2)(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. None.

(a) 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.

(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? None.

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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

704 KAR 19:002. Alternative Education Programs.

RELATES TO: KRS 156.070, 156.160, 160.380

STATUTORY AUTHORITY: KRS 156.160, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070

grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of alternative education programs in school districts.

Section 1. Definitions. (1) "Alternative education program" is defined by KRS 160.380.

(2) "Individual education program" or "IEP" is defined by 707 KAR 1:002.

(3) "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades six (6) through twelve (12) to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(4) "Individual learning plan addendum" or "ILPA" means an action plan that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program that includes, as appropriate, academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

education program.

(5) "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel to ensure the safety of the individual student, the student body, or staff; to meet the educational needs of the student; to transition the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or for disciplinary purposes.

(6) "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within the student's assigned school.

(7) "On-site program" means an alternative education program located within the student's assigned school.

(8) "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

Section 2. General Requirements. (1) Districts shall ensure that alternative education programs are aligned with college and career readiness outcomes for all students. Districts shall strive to ensure that alternative education programs are not limited to one (1) type of program offering to students. Students enrolled in alternative education programs may be eligible to participate in one (1) or more types of programs to address student learning needs that may include alternative digital learning environments, credit recovery, and innovative paths to graduation.

(2) Local boards of education shall review and adopt policies and procedures as necessary for the operation of alternative education programs within the district. Locally-adopted policies and procedures shall include:

(a) Purpose of the program, including the ways the program supports the district's college and career readiness goals for students;

(b) Eligibility criteria, as appropriate;

(c) Process for entering students into the program;

(d) Process for transitioning students out of the program;

(e) Composition of the team to develop the ILPA, which shall include an invitation to the parents to participate and, as appropriate, an invitation to the student to participate; and

(f) Procedures for collaboration with outside agencies involved with involuntary placements, including courts or other social service agencies to address student transitions between programs.

(3) Alternative education programs may be either on-site programs at the student's assigned school or off-site programs located in a separate facility.

(4) Alternative education program curriculum shall be aligned with the Kentucky Core Academic Standards in 704 KAR 3:303, and the student learning goals in the ILP.

(5) Alternative education program students shall be subject to the minimum graduation requirements in 704 KAR 3:305 and any additional local district graduation requirements.

(6) Alternative education programs shall be subject to any applicable requirements of 703 KAR 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver, or its successor.

(7) Students participating in alternative education programs shall be eligible to access extracurricular activities as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(8) Students participating in alternative education programs shall continue to be able to access resources and services already available in the district, such as instructional materials, tutoring, intervention, and counseling services in furtherance of the student's educational program as determined through the development of the ILPA.

Section 3. Placement of Students. (1) The placement of students by the district in alternative education programs may be either voluntary or involuntary. Students entering alternative education programs shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation. The district shall ensure that an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative education program.

(2) The placement decision for all students with an IEP shall be made through the admissions and release committee (ARC) process pursuant to 707 KAR 1:320. For a child with a disability, as defined by 707 KAR 1:002, Section 1(9), the IEP shall address the changed educational delivery needs of the student based upon entry into or exit from an alternative education program. The placement decisions for students that have been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

Section 4. Costs and Expenditures. Districts shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative education program operating in the district.

Section 5. Data. Districts shall utilize the student information system to enter data regarding students enrolled in alternative education programs. Data collected shall include demographic, programmatic or other data fields contained in the student information system required by the department to track and report student participation, educational programming, achievement, and transition to and from alternative education programs.

Section 6. Personnel. Alternative education program teachers and administrators shall be subject to the teacher certification requirements in KRS 161.020, and shall comply with the classified and certified assignment restrictions outlined in KRS 160.380(3).

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, PH.D., Commissioner
DAVID KAREM, Chairperson

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 26, 2012, at 1 p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum requirements for operating alternative education programs in local school districts.

(b) The necessity of this administrative regulation: KRS 156.160 grants the Kentucky Board of Education (KBE) the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. This administrative regulation establishes minimum requirements for alternative school programs. Kentucky's approved waiver from the No Child Left Behind

Act of 2001 (NCLB) (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan addendum (ILPA) process as a part of the state's recognition, accountability and support systems. Approval of the waiver was conditioned upon the implementation of these elements.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes minimum standards for alternative education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific guidance to local school districts about general program requirements, student placement, staff certification, and data 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: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public schools and school districts 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: The proposed administrative regulation will require alternative programs to be aligned with college and career readiness outcomes, Kentucky's core academic standards, and graduation requirements. Districts that do not have policies and procedures to govern these programs will be required to develop them, and parents will be invited to participate in developing an ILP Addendum to address program changes that will occur as a result of a change in placement. Data on types of programs, program costs, and student participation will be collected.

(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: Districts that do not have policies and procedures governing alternative education will be required to develop them. For students not already required to have parent involvement in the planning process, including the development of a plan, a process will need to be developed. Additional program and student data collection will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The Kentucky Department of Education (KDE) will work with the Kentucky School Boards' Association (KSBA) to develop model policies. As many students identified under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Data requirements will be electronically collected through the existing statewide student information system (Infinite Campus) and financial management system and chart of accounts (MUNIS).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More students in alternative school settings will graduate college and career ready. Districts will have better information on the cost and effectiveness of programs to make better placement decisions.

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

(a) Initially: The administrative regulation will require Department staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in im-

plementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(b) On a continuing basis: The administrative regulation will require Department staff time to assist districts with implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department general funds and local district funds as may be required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees are required by this administrative regulation. The provisions of this administrative regulation may be implemented without additional funds at this time.

(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 appropriate in this administrative regulation because the administrative regulation applies equally to all schools and school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 20 U.S.C. secs. 6301, et seq., U.S. Department of Education (USDE) No Child Left Behind Act of 2001 (NCLB) approved waiver issued pursuant to 20 U.S.C. 7861.

(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. Kentucky Department of Education (KDE) - The administrative regulation will require staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system. Additional financial expenditures that may be needed for implementation are not known at this time. Local school districts - It is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The Department will work with the Kentucky School Board Association to develop model policies. As many students identified under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Data requirements are planned to be electronically collected through existing statewide systems.

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

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

(c) How much will it cost to administer this program for the first year? There is little, if any, anticipated additional cost to the Department, as responsibilities and costs will be apportioned to existing staff and fiscal resources. It is expected that local school district costs will be minimal, as the administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, and with minimal burden to local school districts.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that responsibilities and costs can continue to be apportioned among existing resources at both the

state and local levels.

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: Kentucky's approved waiver from the U.S. Department of Education No Child Left Behind Act of 2001 (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan Addendum (ILPA) process as a part of the state's recognition, accountability, and support systems. Subsequent to a review of Kentucky's initial application, the USED required the Department to include additional activities designed to support and engage English language learners, students with disabilities, and other disenfranchised students, which was accomplished by adding the ILPA process and other supports. Approval of the waiver was conditioned upon the inclusion of these elements. The administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, with minimal burden to local school districts.

**PUBLIC PROTECTION CABINET
Department of Insurance
Property and Casualty Division
(Repealer)**

806 KAR 5:051. Repeal of 806 KAR 5:050.

RELATES TO: KRS 190.090; 304.5-070

STATUTORY AUTHORITY: KRS 304.2-110; 304.5-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 5:050, Motor vehicle warranties, which is no longer necessary due to an amendment to KRS 304.5-070 which specifically exempts "service contracts" from the definition of casualty insurance.

Section 1. 806 KAR 5:050, Motor vehicle warranties, is hereby repealed.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 11, 2012

FILED WITH LRC: October 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2012 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by November 16, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: DJ Wasson, Administrative Coordinator, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-3630, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 5:050.

(b) The necessity of this administrative regulation: On July 12, 2012, amendments to KRS 304.5-070 went into effect that, among other things, defined "service contract" in relation to the purchase of a new or used motor vehicle and provided that such service contracts are not insurance. A "service contract" is a contract or agreement given for consideration in addition to the purchase price of a new or used motor vehicle to provide for repair or replacement service or indemnification for that service for the operation or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements. A service contract shall not be considered a contract of, or for, insurance. 806 KAR 5:050 pertains to the regulation of motor vehicle warranties. It defines a "motor vehicle warranty" as "a contract covering only defects in material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing motor vehicles". A "service contract" and a "motor vehicle warranty" are functionally identical. Both require consideration to be given in addition to the purchase price of a motor vehicle, and both provide coverage for defects in material and workmanship. Because 806 KAR 5:050 is inconsistent with the amendments to KRS 190.090, and because service contracts and motor vehicle warranties are not insurance, 806 KAR 5:050 must be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. Because service contracts and motor vehicle warranties are not insurance, 806 KAR 5:050 must be repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals an administrative regulation that governs subject matter not within the regulatory authority of the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects any entity selling a service contract or a motor vehicle warranty. Such contract will now be regulated under KRS Chapter 190.

(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): Nothing.

(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: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No

funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.090, KRS 304.2-110 and KRS 304.5-070.

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? Nothing.

(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? Nothing.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program 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.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division (New Administrative Regulation)

806 KAR 7:110. Derivative instruments.

RELATES TO: KRS 304.7-361, 304.7-405, 304.7-417, 304.7-419, 304.7-421, 304.7-457, 304.7-469, 15 U.S.C. §§ 78 *et seq.*

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.7-367

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.7-367 authorizes the commissioner to promulgate administrative regulations to implement the provisions of KRS Chapter 304, Subtitle 7. This administrative regulation sets standards for the prudent use of derivative instruments in accordance with KRS 304.7-419.

Section 1. Definitions. (1) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether for-profit or not-for-profit.

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified

foreign exchange, or cleared through a qualified clearinghouse.

(4) "Department" is defined by KRS 304.1-050(1).

(5) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(a) To make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or

(b) That has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one (1) or more underlying interests.

(c) "Derivative instruments" include:

1. Options;

2. Warrants;

3. Caps;

4. Floors;

5. Collars;

6. Swaps;

7. Forwards;

8. Futures;

9. Any other substantially similar agreements, options, or instruments including any series or combination of those identified in subsection (5)(c)1. through 9. of this section; and

10. Any agreements, options or instruments permitted under administrative regulations adopted pursuant to KRS 304.7-367.

(d) Derivative instruments shall not include an investment authorized by KRS 304.7-405, 304.7-417, 304.7-421, 304.7-457 or 304.7-469.

(6) "Insurer" is defined in KRS 304.1-040.

(7) "Over-the-counter derivative" means a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse.

(8) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risk as to each other.

(9) "Qualified exchange" means:

(a) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78 *et seq.*), as amended;

(b) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;

(c) Private Offerings, Resales and Trading through Automated Linkages (PORTAL);

(d) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or

(e) A qualified foreign exchange.

(10) "Qualified foreign exchange" means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:

(a) That has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);

(b) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade or contract market is located; or

(c) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade or contract market that qualifies as a "qualified foreign exchange" only under this paragraph shall only be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of such no-action relief under this paragraph.

Section 2. Applicability. The provisions of this administrative regulation shall not apply to:

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

(1) Captive insurers licensed in accordance with KRS 304.49-020, except for industrial insured captive pursuant to KRS 304.49-010(8);

(2) Workers' compensation self-insured groups certified in accordance with KRS 304.50-035; and

(3) Liability self-insurance groups certified in accordance with KRS 304.48-060.

Section 3. Amount of credit risk. (1) The amount of credit risk equals:

(a) The market value of the derivative instrument issued through a qualified clearinghouse if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(b) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(2) If derivative instruments are entered into through a qualified clearinghouse pursuant to a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed by the Securities Valuation Office as eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum of:

(a) The market value of the derivative instruments issued through a qualified clearinghouse entered into pursuant to the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(b) The market value of the derivative instruments issued through a qualified clearinghouse entered into pursuant to the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(3) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties.

Section 4. Guidelines and Internal Control Procedures. (1) Before engaging in a derivative transaction, an insurer shall establish written guidelines, approved by the commissioner, that shall be used for effecting and maintaining derivative transactions. The guidelines shall:

(a) Specify insurer objectives for engaging in derivative transactions and derivative strategies and all applicable risk constraints, including credit risk limits;

(b) Establish counterparty exposure limits and credit quality standards;

(c) Identify permissible derivative transactions and the relationship of those transactions to insurer operations including a precise identification of the risks being hedged by a derivative transaction; and

(d) Require compliance with internal control procedures.

(2) An insurer shall have a written methodology for determining whether a derivative instrument used for hedging has been effective.

(3) An insurer shall have written policies and procedures describing the credit risk management process and a credit risk management system for over-the-counter derivative instrument transactions that measures credit risk exposure using the counterparty exposure amount.

(4) An insurer's board of directors shall, in accordance with KRS 304.7-361:

(a) Approve:

1. The written guidelines, methodology, and policies and procedures required by subsections (1), (2), and (3) of this section; and

2. The systems required by subsections (1) and (2) of this section;

(b) Determine whether the insurer has adequate professional personnel, technical expertise, and systems to implement investment practices involving derivatives;

(c) Review whether derivatives transactions have been made in accordance with the approved guidelines and consistent with stated objectives; and

(d) Take action to correct any deficiencies in internal controls

relative to derivative transactions.

Section 5. Commissioner Approval. Written documentation explaining the insurer's internal guidelines and controls governing derivative transactions shall be submitted for approval to the commissioner. The commissioner shall have the authority to disapprove the guidelines and controls proposed by the insurer if the insurer cannot demonstrate the proposed internal guidelines and controls would be adequate to manage the risks associated with the derivative transactions the insurer intends to engage in.

Section 6. Documentation Requirements. An insurer shall maintain the following documentation and records relating to each derivative transaction:

(1) The purpose or purposes of the transaction;

(2) The assets or liabilities to which the transaction relates;

(3) The specific derivative instrument used in the transaction;

(4) For over-the-counter derivative instrument transactions, the name of the counterparty and the market value; and

(5) For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade and the market value.

Section 7. Trading Requirements. Each derivative instrument shall be:

(1) Traded on a qualified exchange;

(2) Entered into with, or guaranteed by, a business entity;

(3) Issued or written with the issuer of the underlying interest on which the derivative instrument is based; or

(4) Entered into with a qualified foreign exchange.

Section 8. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date determined pursuant to KRS 13A.330, or July 15, 2014, whichever is later.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 11, 2012

FILED WITH LRC: October 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2012, at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012. 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: DJ Wasson, Administrative Coordinator
Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for the prudent use of derivative instruments in accordance with KRS 304.7-419.

(b) The necessity of this administrative regulation: Insurers use derivative instruments to manage and mitigate a variety of risks. This administrative regulation is necessary to establish requirements, such as internal control procedures for monitoring derivative positions and the credit risk management process in order to

ensure proper use of these unique investment tools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.7-367 authorizes the commissioner to promulgate administrative regulations to implement the provisions of KRS Chapter 304, Subtitle 7, related to investments. This administrative regulation sets forth the standards for derivative instruments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Insurance companies use derivative instruments to manage and mitigate a variety of risks. This administrative regulation assists in the effective administration of the statutes by requiring insurance companies to establish written guidelines for transacting in derivative instruments. Insurers are also required to outline internal control procedures describing the monitoring of derivative positions and the credit risk management process.

(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 affects the 20 domestic insurance companies operating in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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: Domestic insurance companies that use derivative instruments will be required to report all open derivative position on an individual transaction basis along with their quarterly financial reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): nominal, since most don't invest of derivatives.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the Department of Insurance will be better able to monitor the solvency of the regulated entity.

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

(a) Initially: There will be no cost to implement this administrative regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all domestic insurance companies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.7-367

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

(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 be revenue neutral.

(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 be revenue neutral.

(c) How much will it cost to administer this program for the first year? This administrative regulation will be revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will be revenue neutral.

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: This administrative regulation will not have a fiscal impact on the Department of Insurance. Rather, this regulation requires insurance companies to include additional information in financial reports that are currently filed and reviewed by the Department of Insurance.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

15 U.S.C. §§ 78 et seq, 17 C.F.R. Part 230, and 17 C.F.R. Part 30

2. State compliance standards. For the purpose of transactions in derivative instruments, this administrative regulation defines a "qualified exchange" as including:

A securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78 et seq.), as amended; and

A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended.

The administrative regulation also defines a "qualified foreign exchange" as including:

A foreign exchange, board of trade or contract market located outside the United States, its territories or possessions that has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30); and

That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade or contract market is located.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation recognizes and incorporates the federal requirements for securities markets regulated under the Securities Exchange Act, designated offshore securities markets defined in the Securities Exchange Commission Regulation, and foreign exchanges regulated pursuant to the Commodity Futures Trading Commission Rule.

4. Will this administrative regulation impose stricter requirements or additional or different responsibilities or requirements,

than those required by the federal mandate? No, this administrative regulation recognizes and incorporates the federal mandate without changes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

**PUBLIC PROTECTION CABINET
Office of Occupations and Professions
(New Administrative Regulation)**

830 KAR 1:010. Forms for Application, Certificate of Registration and Fees.

RELATES TO: KRS 433.902(4)

STATUTORY AUTHORITY: KRS 433.902

NECESSITY, FUNCTION, AND CONFORMITY: KRS 433.902(4) requires the cabinet to implement administrative regulations in accordance with KRS Chapter 13A to prescribe the required forms for registration or renewal registration, for a secondary metals recycler's certificate of registration and for fees. This administrative regulation establishes the required forms and incorporates by reference those forms.

Section 1. (1) Pursuant to KRS 433.902(1)(b), Form SMR-1, Application for Registration as a Secondary Metals Recycler, shall be completed in order to receive a certificate of registration.

(2) The application shall be accompanied by:

(a) Payment of the fee by check or money order made payable to the Kentucky State Treasurer in the amount required by Section (2) of this administrative regulation; and

(b) A copy of the results of a name based criminal background check on the applicant performed by the Kentucky State Police Proper in accordance with KRS 433.902(2).

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form SMR-1, "Application for Registration as a Secondary Metals Recycler", 9/2012; and

(b) "Form SMR-2, Registry for Secondary Metal Recyclers", 9/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky, 40602, Monday through Friday, 8:00 a.m. to 4:30 p.m.

COURTNEY BOURNE, Executive Director

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 11, 2012

FILED WITH LRC: October 12, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2012, at 1:00 p.m., Eastern Time at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2012, at 11:59 p.m. Eastern Standard Time. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation the contact person.

CONTACT PERSON: Lucie Duvall, Registry Administrator, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602; phone (502) 564-3296 ext.230, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucie Duvall, Registry Administrator.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Application for Registration as a secondary metals recycler and creates the forms for the application and for the Certificate of Registration.

(b) The necessity of this administrative regulation: KRS 433.902 requires that secondary metals recyclers obtain a Certificate of Registration before conducting business in the Commonwealth. KRS 433.902 (b) authorizes the Office of Occupations and Professions to prescribe by regulation the form and format of the Certificate of Registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 433.902 (1) (b) (e) and (g) authorize the Office of Occupations and Professions to prescribe the form and format of the application for a Certificate of Registration and to set a cost based fee for administering the registration and renewal of registration process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation specifies the requirements for an application for a secondary metals recycler Certificate of Registration so that the recyclers know what is expected by the Office of Occupations and Professions to obtain registration.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This administrative regulation is not an amendment. It is a new regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 secondary metals recyclers operating 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: Secondary Metals Recyclers in the Commonwealth will be required to submit an application for a Certificate of Registration with the information required by KRS 433.902(1)(b), (e) and (g); (2)(a), (b) and (c); and (3). These requirements include a background check by Kentucky State Police and the information contained in the Application for Registration as a Secondary Metals Recycler. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initially, there will be no cost to the recycler until the Office of Occupations and Professions is able to arrive at an actual cost-based fee as required by KRS 433.902(1)(e).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation provides an efficient procedure for obtaining the required registration to conduct a secondary metals recycling operation.

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

(a) Initially: Costs associated with the initial implementation of this administrative regulation will involve the review of the initial applications for a Certificate of Registration and will be at \$100.00 until an actual cost based fee will be proposed by a subsequent regulation. The cost of reviewing initial and annual renewal applications for Certificates of Registration will be funded by an actual cost based fee authorized by KRS 433.902 (1) (e) and (g).

(b) On a continuing basis: The initial and annual renewal fees based on actual costs will fund the process required by this admin-

istrative regulation. The fees will be calculated by the Office of Occupations and Professions based on actual costs and there will be a fee regulation proposed under the authority of KRS 433.902 (e) and (g) based on actual cost experience.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs for implementing this administrative regulation will be funded by initial and annual renewal fees paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee for the certification will be proposed by regulation and later reviewed after the Office of Occupations and Professions has determined the actual costs of administering the certification of registration program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No. The fees will be established by regulation after an assessment of costs has been undertaken to arrive at an actual administrative cost for processing an application.

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all secondary metals recyclers seeking to do business in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office of Occupations and Professions; Sheriffs; Chiefs of Police: Police Departments and Peace Officers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 433.900; 433.902; 433.904; and 433.906.

(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. The regulation places no duties or authority on local agencies.

(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 administrative regulation will generate no revenue for local governments, and revenue for the state cannot be determined until the number of businesses subject to registration is known.

(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 administrative regulation will generate no revenue for local governments, and revenue for the state cannot be determined until the number of businesses subject to registration is known.

(c) How much will it cost to administer this program for the first year? The charge for administration will be \$1,000. The Office of Occupations and Professions uses a formula to allocate costs for the administrative support it provides to boards. Until a reliable estimate of the number of regulated persons and entities is calculated based on experience, the initial fee is \$1,000.

(d) How much will it cost to administer this program for subsequent years? That amount will be calculated based on the first year of experience through the cost allocation formula mentioned in paragraph (3) (d) above.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 9, 2012

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 9, 2012, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-chair, called the meeting to order, the roll call was taken. The minutes of the September 2012 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, Joey Pendleton, and Representatives Johnny Bell, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Alicia A. Sneed, Education Professional Standards Board; Todd Leatherman, Elizabeth Natter, Kevin Winstead, Office of Consumer Protection; Jonathan Buckley, David Cox, Board of Licensure for Professional Engineers and Land Surveyors; Angela Evans, Sienna Newman; Board of Prosthetics, Orthotics, and Pedorthics; Margaret Everson, Benjy Kinman, Mark Mangeot; Department of Fish and Wildlife; Clint Quarles, Department of Agriculture; Steve Sims, Division of Environment Services; Sean Alteri, Andrea Smith, Division for Air Quality; Frank Goins, DJ Wasson, Maggie Woods; Department of Insurance; Chandra Venettozzi and Phyllis Sosa; Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, October 9, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Administrative certificates

16 KAR 3:010. Certification for school superintendent. Alicia A. Sneed, director, legal services, 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 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assessment

16 KAR 6:030. Examination prerequisites for principal certification.

A motion was made and seconded to approve the following amendment: to amend Section 5 for clarity. Without objection, and with agreement of the agency, the amendment was approved.

OFFICE OF THE ATTORNEY GENERAL: Office of Consumer Protection: Division of Consumer Protection

40 KAR 2:330. Mold remediation. Todd Leatherman, executive director; Elizabeth Natter, assistant attorney general; and Kevin Winstead, assistant attorney general, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 2, to: (1) specify the types of training, education, and experience required for mold remediation; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Kentucky State Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:040. Fees. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5 to specify an internal cross-reference. Without

objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend Sections 3 and 4 to specify internal cross-references; (3) to amend Sections 5, 7, and 8 to clarify provisions; (4) to amend Section 10 to incorporate by reference a required form; and (5) to amend Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Board of Prosthetics, Orthotics, and Pedorthics: Board

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013. Angela Evans, assistant attorney general, and Sienna Newman, chair, represented the board.

In response to a question by Co-Chair Bowen, Ms. Newman stated that these requirements were not established previously because the statute formerly contained these provisions. The statutory provisions expired and authorized that the requirements be established in an administrative regulation.

In response to a question by Co-Chair Bell, Ms. Newman stated that these administrative regulations did not impact negatively on practitioners.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; and (2) to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:100. Inactive status.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:120. Post residency registration.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend 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.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:030. Commercial guide license. Margaret Everson, counsel, and Benjy Kinman, commissioner's office, represented the department.

In response to a question by Co-Chair Bell, Mr. Kinman stated that requirements regarding guide helpers had been amended in this administrative regulation so that, on public land, a helper shall be required to be certified as a guide with regard to safety, CPR training, and other requirements, and, on private land, helper requirements did not change.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

A motion was made and seconded to approve the following amendment: to amend Section 2 to allow rather than require the department to establish an agreement with Camp Piomingo. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Consumer and Environmental Protection: Division of Environmental Services: Structural Pest Control

302 KAR 29:020. General provisions. Clint Quarles, staff attorney, and Steve Sims, manager, Structural Branch, represented the division.

In response to questions by Senator Givens, Mr. Sims stated that commercial pesticide application involved the application to another owner's property. Noncommercial application was pesticide application to a structure on one's own property. Mr. Quarles stated that government agencies also were required to keep pesticide application records. This administrative regulation clarified pesticide application recordkeeping requirements. A person applying a pesticide was required to follow all directions on the pesticide label. Mr. Sims and Mr. Quarles stated that most pesticide applications were already compliant with the new requirements.

In response to a question by Co-Chair Bowen, Mr. Sims and Mr. Quarles stated that enforcement application was triggered if pesticides were being applied to another owner's property.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend the TITLE and Section 3 for clarity; (3) to amend Section 4 to correct a citation; and (4) to amend Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 29:060. Certification.

In response to a question by Senator Givens, Mr. Quarles stated that the deadline change was intended so that all certifications would expire on the same date, even those certifications that had been on different certification cycles. Only five (5) percent of applicants were affected, and those were affected positively. The department had a new computer system that worked better if all certifications were on the same expiration cycle.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, 5, and 8 to specify an internal cross-reference; (2) to amend Sections 2 and 5 to clarify provisions; (3) to amend Section 9 to update the form incorporated by reference; (4) to amend Sections 1, 2, 4, 5, and 8 to comply with the drafting requirements of KRS Chapter 13A; and (5) to amend the structural pest control certification requirements to also require applicants to demonstrate practical knowledge of environmental conditions. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51. Sean Alteri, assistant director, and Andrea Smith, manager, Program Planning Branch, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1(207) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 51:017. Prevention of significant deterioration of air quality.

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

PUBLIC PROTECTION CABINET: Department of Insurance: Agent Licensing Division: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:211. Repeal of 806 KAR 9:210. Frank Goins, director, Property and Casualty Division; D. J. Wasson, administrative coordinator; and Maggie Woods, director of agency licensing, represented the division.

Property and Casualty Division: Surplus Lines

806 KAR 10:060. Cancellation of financial responsibility.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Kentucky Access: Health Insurance Contracts

806 KAR 17:540. ICARE Program high-cost conditions.

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

806 KAR 17:555. ICARE Program requirements.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:060. Timetable for submission of certificate of need applications. Chandra Venettozzi, health data administrator, represented the cabinet.

In response to a question by Co-Chair Bell, Ms. Venettozzi stated that this administrative regulation authorized the cabinet to reject a CON application if the application was filed more than eighty (80) days before the desired public notice.

900 KAR 6:085. Implementation of outstanding Certificate of Need when ownership has changed.

In response to a question by Co-Chair Bell, Ms. Venettozzi stated that this administrative regulation authorized a facility to transfer an unused CON only to a facility purchasing the facility with the other existing CONs as well.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.

In response to a question by Co-Chair Bell, Ms. Venettozzi stated that this administrative regulation was amended as part of a reorganization of requirements.

A motion was made and seconded to approve the following amendments: to amend Section 4 to: (1) correct a citation; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:130. Certificate of Need criteria for physician exemption.

In response to a question by Senator Pendleton, Ms. Venettozzi stated that she would investigate why Cumberland Hall transferred prospective military patients to Tennessee. Cumberland Hall had twenty (20) unoccupied beds; however, Cumberland Hall stated that those beds could not be used for adult or military patients. Ms. Venettozzi agreed to report the findings of the investigation to the Subcommittee.

VOLUME 39, NUMBER 5 – NOVEMBER 1, 2012

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct statutory citations; and (2) to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Operations Support: Aging Services

910 KAR 1:240. Certification of assisted-living communities. Phyllis Sosa, assistant director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 7 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the November 13, 2012, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:020 & E. Examination.

201 KAR 2:030 & E. License transfer.

201 KAR 2:050 & E. Licenses and permits; fees.

201 KAR 2:061 & E. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

201 KAR 2:205 & E. Pharmacist-in-charge.

Board of Optometric Examiners: Board

201 KAR 5:010 & E. Application for licensure; endorsement.

201 KAR 5:030 & E. Annual courses of study required.

201 KAR 5:130 & E. Controlled substances.

Board of Dentistry: Board

201 KAR 8:520. Fees and fines.

201 KAR 8:532 & E. Licensure of dentists.

201 KAR 8:540 & E. Dental practices and prescription writing.

Board of Medical Licensure: Board

201 KAR 9:081 & E. Disciplinary proceedings.

201 KAR 9:200 & E. National Practitioner Data Bank reports.

201 KAR 9:210 & E. Criminal background checks required for all new applicants.

201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.

201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings.

201 KAR 9:310 & E. Continuing medical education.

Board of Nursing: Board

201 KAR 20:056 & E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

201 KAR 20:161 & E. Investigation and disposition of complaints.

201 KAR 20:215 & E. Continuing competency requirements.

Board of Podiatry: Board

201 KAR 25:011 & E. Approved schools; examination application; fees.

201 KAR 25:021 & E. Annual renewal of licenses, fees.

201 KAR 25:031 & E. Continuing education.

201 KAR 25:051 & E. Procedure for complaints and hearings involving licensees: temporary suspension.

201 KAR 25:090 & E. Prescribing and dispensing controlled substances.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Elevator Safety

815 KAR 4:030. Elevator contractor licensing requirements.

815 KAR 4:040. Elevator mechanic licensing requirements.

815 KAR 4:060. Requirements for approval of continuing education courses and providers.

The Subcommittee adjourned at 1:40 p.m. until November 13, 2012.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 2, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of October 2, 2012, having been referred to the Committee on September 5, 2012, pursuant to KRS 13A.290(6):

502 KAR 1:120 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 2, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 17, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of October 17, 2012, having been referred to the Committee on October 3, 2012, pursuant to KRS 13A.290(6):

201 KAR 20:230
201 KAR 20:370
201 KAR 20:411
202 KAR 7:601
900 KAR 9:010
906 KAR 1:160 & E
921 KAR 1:001
921 KAR 1:380
921 KAR 1:400
921 KAR 1:410

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

202 KAR 7:601

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 17, 2012 meeting, which are hereby incorporated by reference.

**INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 24, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on State Government for its meeting of October 24, 2012, having been referred to the Committee on October 3, 2012, pursuant to KRS 13A.290(6):

105 KAR 1:400 & E
105 KAR 1:420
105 KAR 1:430

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

NONE

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

NONE

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 October 24, 2012, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

E - 2

The Locator Index lists all administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky* from July 2012 through June 2013. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in VOLUME 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2012 *Kentucky Administrative Regulations Service* was published.

KRS Index

E - 8

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 39 of the *Administrative Register of Kentucky*.

Technical Amendment Index

E -14

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index

E - 15

The Subject Index is a general index of administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
VOLUME 38					
The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in Volume 38 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2012 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			AmComments	1974	(See 39 Ky.R.)
* Statement of Consideration not filed by deadline			301 KAR 2:041		
** Withdrawn, not in effect within 1 year of publication			Amended	1879	(See 39 Ky.R.)
*** Withdrawn before being printed in Register			301 KAR 2:049		
**** Emergency expired after 180 days			Amended	1883	(See 39 Ky.R.)
(r) Repealer regulation: KRS 13A.310-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.			301 KAR 2:081		
			Amended	1887	(See 39 Ky.R.)
			301 KAR 2:082		
			Amended	1893	(See 39 Ky.R.)
			301 KAR 2:084		
			Amended	1898	(See 39 Ky.R.)
			301 KAR 2:300		
			Amended	1899	(See 39 Ky.R.)
			301 KAR 3:022		
			Amended	1903	(See 39 Ky.R.)
			301 KAR 2:251		
			Amended	1661	
			As Amended	1948	6-7-12
103 KAR 31:170E	1934	5-11-12	304 KAR 1:040		
Replaced	458	10-5-12	Amended	2002	(See 39 Ky.R.)
405 KAR 10:011E(r)	1935	5-4-12	304 KAR 1:080	2110	(See 39 Ky.R.)
405 KAR 10:015E	1937	5-4-12	304 KAR 1:410	1974	
921 KAR 2:015E	1429	12-29-11	405 KAR 10:015	2111	(See 39 Ky.R.)
Replaced	1969	6-20-12	405 KAR 10:030		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	2004	(See 39 Ky.R.)
11 KAR 3:100			405 KAR 16:020		
Amended	1977	(See 39 Ky.R.)	Amended	2007	(See 39 Ky.R.)
101 KAR 2:102			501 KAR 6:020		
Amended	1171	7-6-12	Amended	1905	(See 39 Ky.R.)
101 KAR 2:140			501 KAR 6:050		
Amended	1176		Amended	2011	(See 39 Ky.R.)
As Amended	1944	7-6-12	501 KAR 6:090		
101 KAR 3:015			Repealed	1808	7-6-12
Amended	1178	7-6-12	501 KAR 6:091(r)	1808	7-6-12
103 KAR 8:010			501 KAR 6:110		
Amended	73		Amended	2013	
As Amended	1297		501 KAR 6:200		
103 KAR 31:170	2107	(See 39 Ky.R.)	Amended	1791	
106 KAR 2:030	2108	(See 39 Ky.R.)	As Amended	1951	7-6-12
201 KAR 8:562			501 KAR 6:240		
Amended	1870	(See 39 Ky.R.)	Amended	1793	
201 KAR 13:040			As Amended	1953	7-6-12
Amended	1875	(See 39 Ky.R.)	501 KAR 6:260	1916	(See 39 Ky.R.)
201 KAR 18:220			501 KAR 6:280	1918	(See 39 Ky.R.)
Amended	1991	8-31-12	503 KAR 1:110		
201 KAR 20:450			Amended	1795	
Amended	1994	(See 39 Ky.R.)	As Amended	1953	7-6-12
201 KAR 20:490			503 KAR 3:070		
Amended	1764		Amended	1665	
As Amended	1945	6-20-12	As Amended	1956	7-6-12
201 KAR 20:510			601 KAR 1:018		
Amended	1997	8-15-12	Amended	1487	
201 KAR 23:015			As Amended	1957	7-6-12
Amended	1767		601 KAR 1:019	1399	
As Amended	1947	6-20-12	As Amended	1962	7-6-12
201 KAR 30:050			702 KAR 1:160		
Amended	1768		Amended	1799	(See 39 Ky.R.)
As Amended	1947	7-6-12	703 KAR 5:002(r)	1401	(See 39 Ky.R.)
201 KAR 32:035			703 KAR 5:070		
Amended	1877	(See 39 Ky.R.)	Amended	1907	(See 39 Ky.R.)
202 KAR 7:601			703 KAR 5:140		
Amended	1770	(See 39 Ky.R.)	Amended	1391	(See 39 Ky.R.)
301 KAR 1:201			703 KAR 5:220	707	
Amended	1783	6-7-12	703 KAR 5:225	1919	(See 39 Ky.R.)
301 KAR 1:410			703 KAR 5:240	1407	(See 39 Ky.R.)
Amended	1788		704 KAR 3:340		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	1909	(See 39 Ky.R.)	811 KAR 1:093	2118	8-30-12
704 KAR 5:070	1410	(See 39 Ky.R.)	811 KAR 1:095		
803 KAR 2:300			Amended	2077	(See 39 Ky.R.)
Amended	2016	8-31-12	811 KAR 2:093	2119	8-31-12
803 KAR 2:307			811 KAR 2:096		
Amended	2018	8-31-12	Amended	2084	(See 39 Ky.R.)
803 KAR 2:309			811 KAR 2:100		
Amended	2021	8-31-12	Amended	2093	(See 39 Ky.R.)
803 KAR 2:313			815 KAR 6:010		
Amended	2023	(See 39 Ky.R.)	Amended	1498	
803 KAR 2:316			Amended	1866	
Amended	2025	8-31-12	As Amended	1966	7-6-12
803 KAR 2:317			815 KAR 6:070	1521	
Amended	2027	8-31-12	As Amended	1968	
803 KAR 2:319			Withdrawn		6-8-12
Amended	2029	8-31-12	815 KAR 20:100		
803 KAR 2:320			Amended	2099	8-31-12
Amended	2031	(See 39 Ky.R.)	900 KAR 7:030		
803 KAR 2:403			Amended	2102	8-31-12
Amended	2037	8-31-12	900 KAR 9:010	2121	(See 39 Ky.R.)
803 KAR 2:405			921 KAR 2:015		
Amended	2040	(See 39 Ky.R.)	Amended	1501	
803 KAR 2:407			As Amended	1969	6-20-12
Amended	2042	(See 39 Ky.R.)	921 KAR 3:035		
803 KAR 2:425			Amended	1804	6-20-12
Amended	2044	(See 39 Ky.R.)			
803 KAR 2:500					
Amended	2046	8-31-12			
804 KAR 4:370					
Amended	2049	8-31-12			
806 KAR 3:190					
Amended	1910	(See 39 Ky.R.)			
810 KAR 1:018					
Amended	2052	(See 39 Ky.R.)			
810 KAR 1:028					
Amended	2061	(See 39 Ky.R.)			
810 KAR 1:040	2116	8-31-12			
811 KAR 1:090					
Amended	2068	(See 39 Ky.R.)			

SYMBOL KEY:

* Statement of Consideration not filed by deadline
 ** Withdrawn, not in effect within 1 year of publication
 *** Withdrawn before being printed in Register
 (r) Repealer regulation: KRS 13A.310-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

VOLUME 39

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

101 KAR 2:210	729	9-14-12
103 KAR 3:060E	942	9-27-12
103 KAR 5:220	730	9-4-12
105 KAR 1:400E	4	5-30-12
201 KAR 2:020E	378	7-20-12
201 KAR 2:030E	379	7-20-12
201 KAR 2:050E	381	7-20-12
201 KAR 2:061E	383	7-20-12
201 KAR 2:205E	385	7-20-12
201 KAR 2:350E	386	7-20-12
201 KAR 5:010	388	7-20-12
201 KAR 5:030	390	7-20-12
201 KAR 5:130	392	7-20-12
201 KAR 8:532	394	7-20-12
201 KAR 8:540	398	7-25-12
201 KAR 9:001	401	7-20-12
201 KAR 9:081	402	7-20-12
201 KAR 9:200	406	7-20-12
201 KAR 9:210	408	7-20-12
201 KAR 9:220	409	7-20-12
201 KAR 9:230	410	7-20-12
201 KAR 9:240	411	7-20-12
201 KAR 9:250	414	7-20-12

201 KAR 9:260	418	7-20-12
201 KAR 9:310	423	7-20-12
201 KAR 20:056	426	7-20-12
201 KAR 20:057	429	7-20-12
201 KAR 20:161	431	7-20-12
201 KAR 20:215	434	7-20-12
201 KAR 25:011	436	7-20-12
201 KAR 25:021	438	7-20-12
201 KAR 25:031	439	7-20-12
201 KAR 25:051	441	7-20-12
201 KAR 25:090	444	7-20-12
301 KAR 2:225	773	8-27-12
900 KAR 6:075	736	8-23-12
902 KAR 20:420	446	7-20-12
902 KAR 55:110	452	7-20-12
502 KAR 10:120E	8	5-31-12
906 KAR 1:160E	182	7-13-12
907 KAR 9:005	739	9-4-12
907 KAR 9:010	746	9-4-12
907 KAR 14:005E	184	6-22-12

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		(See 38 Ky.R.)
As Amended	187	8-31-12
13 KAR 1:020		
Amended	1043	
16 KAR 2:120		
Amended	66	
As Amended	456	9-10-12

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
16 KAR 3:010			Amended	526	
Amended	497		201 KAR 13:040		(See 38 Ky.R.)
As Amended	944		As Amended	11	8-6-12
16 KAR 6:030			201 KAR 14:105		
Amended	499		Amended	821	
As Amended	945		201 KAR 17:090		
40 KAR 2:330	350		Amended	823	
Amended	780		201 KAR 17:110	918	
As Amended	946		201 KAR 18:040		
101 KAR 2:210			Amended	528	
Amended	813		As Amended	948	
102 KAR 1:225			201 KAR 18:192		
Amended	1050		Amended	530	
103 KAR 5:220	916		As Amended	948	
103 KAR 31:170		(See 38 Ky.R.)	201 KAR 20:056		
As Amended	458	10-5-12	Amended	533	
105 KAR 1:400			201 KAR 20:057		
Amended	68		Amended	535	
As Amended	750		201 KAR 20:161		
105 KAR 1:420			Amended	538	
Amended	72		201 KAR 20:215		
As Amended	753		Amended	540	
105 KAR 1:430			201 KAR 20:230		
Amended	74		Amended	257	
As Amended	753		201 KAR 20:370		
106 KAR 2:030		(See 38 Ky.R.)	Amended	258	
As Amended	199	8-21-12	201 KAR 20:411		
200 KAR 14:011			Amended	259	
Amended	814		201 KAR 20:450		(See 38 Ky.R.)
200 KAR 14:081			As Amended	203	8-15-12
Amended	817		201 KAR 22:001		
200 KAR 14:091			Amended	76	
Amended	820		Withdrawn		8-16-12
201 KAR 2:020			Amended	826	
Amended	501		201 KAR 22:040		
201 KAR 2:030			Amended	77	9-19-12
Amended	502		201 KAR 22:045		
201 KAR 2:040			Amended	79	
Amended	1051		As Amended	459	9-19-12
201 KAR 2:050			201 KAR 22:053		
Amended	504		Amended	81	
201 KAR 2:061			Withdrawn		8-16-12
Amended	506		Amended	827	
201 KAR 2:205			201 KAR 25:011		
Amended	508		Amended	543	
201 KAR 2:340	172		201 KAR 25:021		
As Amended	458	9-19-12	Amended	545	
201 KAR 2:350	655		201 KAR 25:031		
201 KAR 5:010			Amended	546	
Amended	509		201 KAR 25:051		
201 KAR 5:030			Amended	548	
Amended	511		201 KAR 25:090	676	
201 KAR 5:130	656		201 KAR 30:030		
201 KAR 8:520			Amended	83	
Amended	512		As Amended	460	10-5-12
201 KAR 8:532			201 KAR 30:125		
Amended	514		Amended	86	10-5-12
201 KAR 8:540			201 KAR 30:180		
Amended	519		Amended	87	
201 KAR 8:562		(See 38 Ky.R.)	As Amended	461	10-5-12
As Amended	199	8-15-12	201 KAR 30:190		
201 KAR 9:001	658		Amended	90	
201 KAR 9:081			As Amended	463	10-5-12
Amended	521		201 KAR 32:035		(See 38 Ky.R.)
201 KAR 9:200	660		As Amended	12	8-6-12
201 KAR 9:210	661		201 KAR 43:050	1079	
201 KAR 9:220	661		201 KAR 44:090	353	
201 KAR 9:230	663		As Amended	950	
201 KAR 9:240	664		201 KAR 44:100	354	
201 KAR 9:250	667		As Amended	951	
201 KAR 9:260	671		201 KAR 44:110	356	
201 KAR 9:310			As Amended	951	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
201 KAR 44:120	357		As Amended	467	10-5-12
As Amended	952		304 KAR 4:070	***	
201 KAR 45:010	920		Withdrawn		8-17-2012
201 KAR 45:020	921		306 KAR 1:011(r)	358	
201 KAR 45:030	922		307 KAR 1:005	359	
201 KAR 45:040	923		As Amended	767	
201 KAR 45:050	925		307 KAR 4:020		
202 KAR 7:601		(See 38 Ky.R.)	Amended	262	
AmComments	40		307 KAR 8:011(r)	361	
As Amended	754		307 KAR 9:010		
As Amended	952		Amended	264	
301 KAR 1:015			401 KAR 5:055		
Amended	830		Amended	265	
301 KAR 1:146			AmComments	990	
Amended	832		401 KAR 5:060		
301 KAR 1:155			Amended	268	
Amended	834		AmComments	992	
301 KAR 1:410		(See 38 Ky.R.)	401 KAR 10:001		
As Amended	13	7-12-12	Amended	561	
301 KAR 2:030			401 KAR 10:026		
Amended	551		Amended	564	
As Amended	965		401 KAR 10:030		
301 KAR 2:041		(See 38 Ky.R.)	Amended	584	
As Amended	205	8-2-12	401 KAR 10:031		
301 KAR 2:049		(See 38 Ky.R.)	Amended	596	
As Amended	15	7-12-12	401 KAR 51:001		
301 KAR 2:081		(See 38 Ky.R.)	Amended	113	
As Amended	18	7-12-12	Amended	783	
301 KAR 2:082		(See 38 Ky.R.)	As Amended	971	
As Amended	23	7-12-12	401 KAR 51:017		
301 KAR 2:084		(See 38 Ky.R.)	Amended	124	
As Amended	27	7-12-12	As Amended	794	
301 KAR 2:225			401 KAR 51:052		
Amended	838		Amended	135	
301 KAR 2:300		(See 38 Ky.R.)	405 KAR 10:015		(See 38 Ky.R.)
AmComments	53	8-2-12	As Amended	467	9-6-12
301 KAR 3:012			405 KAR 10:030		(See 38 Ky.R.)
Amended	554		As Amended	471	9-6-12
As Amended	967		405 KAR 16:020		(See 38 Ky.R.)
301 KAR 3:022		(See 38 Ky.R.)	As Amended	473	9-6-12
AmComments	56	(See 38 Ky.R.)	418 KAR 1:010		
As Amended	208	8-2-12	Amended	844	
301 KAR 4:070			418 KAR 1:020		
Amended	***	8-17-12	Amended	846	
Amended	841		418 KAR 1:031	926	
302 KAR 16:091			418 KAR 1:040		
Amended	94	9-14-12	Amended	848	
302 KAR 27:050			418 KAR 1:050		
Amended	95		Amended	850	
Withdrawn		8-9-12	418 KAR 1:060		
302 KAR 28:020			Amended	852	
Amended	100		418 KAR 1:070		
Withdrawn		8-9-12	Amended	854	
302 KAR 28:050			501 KAR 6:020		(See 38 Ky.R.)
Amended	102		As Amended	27	8-6-12
Withdrawn		8-9-12	Amended	1053	
302 KAR 29:020			501 KAR 6:050		(See 38 Ky.R.)
Amended	104		As Amended	209	
Withdrawn		8-9-12	501 KAR 6:130		
Amended	556		Amended	144	
As Amended	968		As Amended	476	10-5-12
302 KAR 29:050			501 KAR 6:140		
Amended	106		Amended	146	
Withdrawn		8-9-12	As Amended	477	10-5-12
302 KAR 29:060			501 KAR 6:230		
Amended	110		Amended	270	
Withdrawn		8-9-12	As Amended	768	
Amended	558		501 KAR 6:260		(See 38 Ky.R.)
As Amended	969		As Amended	211	8-31-12
304 KAR 1:040		(See 38 Ky.R.)	501 KAR 6:270		
As Amended	466	10-5-12	Amended	272	
304 KAR 1:080		(See 38 Ky.R.)	As Amended	768	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
501 KAR 6:280		(See 38 Ky.R.)	Amended	295	
As Amended	212	8-31-12	AmComments	1015	
501 KAR 11:011(r)	362		807 KAR 5:011		
501 KAR 16:290			Amended	312	
Amended	603		AmComments	1032	
501 KAR 16:310			807 KAR 5:076		
Amended	606		Amended	320	
501 KAR 16:330			810 KAR 1:018		(See 38 Ky.R.)
Amended	609		As Amended	218	8-30-12
502 KAR 10:120			810 KAR 1:028		(See 38 Ky.R.)
Amended	148		As Amended	224	8-31-12
As Amended	478		811 KAR 1:090		(See 38 Ky.R.)
601 KAR 9:090			As Amended	230	8-30-12
Amended	274		811 KAR 1:095		(See 38 Ky.R.)
601 KAR 13:110			As Amended	237	8-31-12
Amended	1055		811 KAR 2:096		(See 38 Ky.R.)
602 KAR 50:030			As Amended	243	8-31-12
Amended	1058		811 KAR 2:100		(See 38 Ky.R.)
602 KAR 50:050			As Amended	251	8-31-12
Amended	1059		815 KAR 4:030		
702 KAR 1:160		(See 38 Ky.R.)	Amended	622	
As Amended	28	7-13-12	815 KAR 4:040		
703 KAR 5:002		(See 38 Ky.R.)	Amended	625	
As Amended	30	7-13-12	815 KAR 4:060		
703 KAR 5:070		(See 38 Ky.R.)	Amended	627	
AmComments	59		815 KAR 8:060		
As Amended	480		Amended	1064	
Withdrawn		10-4-12	815 KAR 10:060		
703 KAR 5:140		(See 38 Ky.R.)	Amended	1066	
As Amended	31	7-13-12	815 KAR 20:020		
703 KAR 5:225		(See 38 Ky.R.)	Amended	151	
AmComments	60		As Amended	485	10-5-12
As Amended	480	9-10-12	815 KAR 20:034		
703 KAR 5:240		(See 38 Ky.R.)	Amended	325	
As Amended	32	7-13-12	815 KAR 20:191		
704 KAR 3:305			Amended	155	10-5-12
Amended	612		815 KAR 22:010	927	
704 KAR 3:340		(See 38 Ky.R.)	815 KAR 35:020	363	
As Amended	34	7-13-12	As Amended	769	
704 KAR 5:070		(See 38 Ky.R.)	815 KAR 35:060		
As Amended	35	7-13-12	Amended	162	
704 KAR 7:160	678		As Amended	488	10-5-12
704 KAR 19:002	1082		830 KAR 1:010	1089	
789 KAR 1:010			900 KAR 6:030		
Amended	1061		Amended	856	
803 KAR 2:313		(See 38 Ky.R.)	900 KAR 6:060		
As Amended	212	8-31-12	Amended	327	
803 KAR 2:320		(See 38 Ky.R.)	Amended	805	
As Amended	212	8-31-12	900 KAR 6:075		
803 KAR 2:405		(See 38 Ky.R.)	Amended	857	
As Amended	217	8-31-12	900 KAR 6:085		
803 KAR 2:407		(See 38 Ky.R.)	Amended	329	
As Amended	217	8-31-12	As Amended	982	
803 KAR 2:425		(See 38 Ky.R.)	900 KAR 6:090		
As Amended	217	8-31-12	Amended	331	
806 KAR 3:190		(See 38 Ky.R.)	Amended	807	
As Amended	36	8-6-12	As Amended	982	
806 KAR 5:051(r)	1085		900 KAR 6:125		
806 KAR 7:110	1086		Amended	860	
806 KAR 9:211(r)	682		900 KAR 6:130	365	
806 KAR 10:060	683		Amended	811	
As Amended	981		As Amended	985	
806 KAR 17:540			900 KAR 9:010		(See 38 Ky.R.)
Amended	615		As Amended	770	
806 KAR 17:545			902 KAR 20:420	684	
Amended	617		902 KAR 55:110		
806 KAR 17:555			Amended	629	
Amended	620		906 KAR 1:160		
807 KAR 5:001			Amended	335	
Amended	275		As Amended	771	
AmComments	995		907 KAR 1:145		
807 KAR 5:006			Amended	632	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
907 KAR 1:155					
Amended	646				
907 KAR 3:170					
Amended	1070				
907 KAR 9:005					
Amended	863				
907 KAR 9:010					
Amended	869				
907 KAR 12:010	690				
907 KAR 12:020	716				
907 KAR 14:005	367				
AmComments	1040				
908 KAR 3:050					
Amended	873				
910 KAR 1:190					
Amended	164				
As Amended	490	9-19-12			
910 KAR 1:240					
Amended	649				
As Amended	986				
910 KAR 1:260					
Amended	875				
910 KAR 1:240					
921 KAR 1:001					
Amended	337				
As Amended	772				
921 KAR 1:380					
Amended	339				
As Amended	774				
921 KAR 1:400					
Amended	342				
921 KAR 1:410					
Amended	345				
As Amended	776				
922 KAR 2:090					
Amended	878				
922 KAR 2:100					
Amended	883				
922 KAR 2:110					
Amended	893				
922 KAR 2:120					
Amended	898				
922 KAR 2:180					
Amended	907				
922 KAR 2:190					
Amended	912				

----- SYMBOL KEY:

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KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
12	907 KAR 3:170		401 KAR 10:026
12.355	201 KAR 22:045		401 KAR 10:030
13B	201 KAR 20:161		401 KAR 10:031
	815 KAR 35:060	146.415	418 KAR 1:010
	910 KAR 1:240	146.550 - 146.570	401 KAR 10:001
	910 KAR 1:260		401 KAR 10:026
	922 KAR 2:090		401 KAR 10:030
	922 KAR 2:100		401 KAR 10:031
	922 KAR 2:190		418 KAR 1:010
13B.010	921 KAR 1:410		418 KAR 1:020
15.055	921 KAR 1:410		418 KAR 1:031
15.380	906 KAR 1:160		418 KAR 1:040
16.505 - 16.652	105 KAR 1:430		418 KAR 1:050
17.165	910 KAR 1:240		418 KAR 1:060
	922 KAR 2:090		418 KAR 1:070
	922 KAR 2:100	146.600 - 146.619	401 KAR 10:001
	922 KAR 2:110		401 KAR 10:026
	922 KAR 2:180		401 KAR 10:030
17.500-17.580	922 KAR 2:090		401 KAR 10:031
	922 KAR 2:100	146.990	401 KAR 10:001
	922 KAR 2:110		401 KAR 10:026
	922 KAR 2:180		401 KAR 10:030
18A.030	101 KAR 2:210		401 KAR 10:031
18A.225	101 KAR 2:210	150.010	301 KAR 1:015
18A.2254	101 KAR 2:210		301 KAR 1:146
39A.350- 39A.366	201 KAR 8:532		301 KAR 1:155
41.610	200 KAR 14:081		301 KAR 2:300
	200 KAR 14:091		301 KAR 3:012
42.014	200 KAR 14:091		301 KAR 4:070
42.500	200 KAR 14:011	150.025	301 KAR 1:146
	200 KAR 14:081		301 KAR 3:022
	200 KAR 14:091	150.092	301 KAR 2:300
42.505-42.545	200 KAR 14:091	150.120	301 KAR 1:146
42.520	200 KAR 14:011		301 KAR 1:155
	200 KAR 14:081	150.170	301 KAR 1:146
42.525	200 KAR 14:011		301 KAR 1:155
	200 KAR 14:081		301 KAR 2:030
45A.365	601 KAR 13:110		301 KAR 2:300
48.010	401 KAR 51:001		301 KAR 4:070
58.200	815 KAR 20:191	150.175	301 KAR 1:146
61.510 - 61.705	105 KAR 1:430		301 KAR 1:155
61.645	105 KAR 1:400		301 KAR 2:300
61.701	105 KAR 1:420		301 KAR 3:022
61.702	105 KAR 1:420	150.180	301 KAR 3:022
61.645	105 KAR 1:420		301 KAR 4:070
61.805-61.850	418 KAR 1:020	150.183	301 KAR 3:022
61.870-884	418 KAR 1:020	150.090	301 KAR 1:015
	807 KAR 5:001	150.195	301 KAR 4:070
67A.620	921 KAR 1:410	150.240	301 KAR 3:012
78.510 - 78.852	105 KAR 1:430		301 KAR 3:022
95.620	921 KAR 1:410	150.275	301 KAR 3:022
95.878	921 KAR 1:410	150.280	301 KAR 3:022
98.2	922 KAR 2:090	150.290	301 KAR 3:022
124.62	401 KAR 5:055	150.330	301 KAR 2:225
131.400	103 KAR 3:060E	150.340	301 KAR 2:225
131.410	103 KAR 3:060E	150.445	301 KAR 1:146
131.420	103 KAR 3:060E		301 KAR 1:155
131.425	103 KAR 3:060E	150.450	301 KAR 1:146
131.430	103 KAR 3:060E		301 KAR 1:155
131.435	103 KAR 3:060E		301 KAR 3:022
131.440	103 KAR 3:060E	150.485	301 KAR 3:022
131.445	103 KAR 3:060E	150.520	301 KAR 3:022
131.570	921 KAR 1:410	150.525	301 KAR 3:022
134.490	103 KAR 5:220	150.600	301 KAR 3:022
141.040	306 KAR 1:011	150.603	301 KAR 2:225
146.200 - 146.360	401 KAR 10:001		301 KAR 3:022
	401 KAR 10:026	150.620	301 KAR 3:012
	401 KAR 10:030	150.625	301 KAR 1:015
	401 KAR 10:031	150.640	301 KAR 3:012
	418 KAR 1:031		301 KAR 3:022
146.410 - 146.535	401 KAR 10:001	150.660	301 KAR 3:022

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.720	301 KAR 3:022	186A.115	601 KAR 9:090
150.990	301 KAR 1:015	186A.500-550	601 KAR 9:090
	301 KAR 1:146	189.010-210	601 KAR 9:090
	301 KAR 1:155	189.125	922 KAR 2:100
	301 KAR 2:030		922 KAR 2:120
	301 KAR 3:012	189A.010	601 KAR 13:110
	301 KAR 4:070	190.090	806 KAR 5:051
151	922 KAR 2:120	194A.050	921 KAR 1:001
151B.450	789 KAR 1:010		922 KAR 2:100
151B.465	789 KAR 1:010	194A.060	907 KAR 3:170
154.12-100	307 KAR 1:005		910 KAR 1:190
154.20-033	307 KAR 1:005		910 KAR 1:240
	307 KAR 8:011	194A.125	907 KAR 3:170
	307 KAR 9:010		
154.31	307 KAR 1:005	194A.700-729	910 KAR 1:240
	307 KAR 4:020	196	501 KAR 6:020
154.32	307 KAR 8:011		501 KAR 6:130
154.32-010	307 KAR 1:005		501 KAR 6:140
154.34-070	307 KAR 9:010		501 KAR 6:230
154.45-001-154.45-120	306 KAR 1:011		501 KAR 6:270
156.070	704 KAR 19:002		501 KAR 6:999
156.160	704 KAR 3:305	196.030	501 KAR 16:290
	704 KAR 7:160		501 KAR 16:310
	704 KAR 19:002		501 KAR 16:330
157	922 KAR 2:090	196.070	501 KAR 16:290
157.390	16 KAR 2:120		501 KAR 16:310
158.444	704 KAR 7:160		501 KAR 16:330
158.645	703 KAR 5:225	196.180	501 KAR 16:290
	704 KAR 3:305		501 KAR 16:310
158.6451	703 KAR 5:070		501 KAR 16:330
	703 KAR 5:225	197	501 KAR 6:020
	704 KAR 3:305		501 KAR 6:130
158.6453	703 KAR 5:070		501 KAR 6:140
	703 KAR 5:225		501 KAR 6:230
158.6455	703 KAR 5:070		501 KAR 6:270
	703 KAR 5:225		501 KAR 6:999
160.380	704 KAR 19:002	198B.030	815 KAR 4:060
161.020	16 KAR 2:120	198B.110	815 KAR 10:060
	16 KAR 3:010	198B.658	815 KAR 8:060
	16 KAR 6:030	198B.660	815 KAR 8:060
161.027	16 KAR 6:030	198B.664	815 KAR 8:060
161.028	16 KAR 2:120	198B.672	815 KAR 8:060
	16 KAR 3:010	198B.684	815 KAR 8:060
161.030	16 KAR 2:120	198B.4003	815 KAR 4:030
	16 KAR 3:010		815 KAR 4:040
	16 KAR 6:030	198B.4009	815 KAR 4:030
161.100	16 KAR 2:120		815 KAR 4:040
161.470	102 KAR 1:225		815 KAR 4:060
161.600	102 KAR 1:225	198B.4011	815 KAR 4:030
161.700	921 KAR 1:410		815 KAR 4:060
161.716	102 KAR 1:225	198B.4013	815 KAR 4:040
161.1211	16 KAR 2:120		815 KAR 4:060
161.1221	16 KAR 2:120	198B.4023	815 KAR 4:030
164.772	201 KAR 22:040		815 KAR 4:040
	815 KAR 35:060		815 KAR 4:060
164.945	13 KAR 1:020	198B.4025	815 KAR 4:030
164.946	13 KAR 1:020		815 KAR 4:040
164.947	13 KAR 1:020		815 KAR 4:060
164.992	13 KAR 1:020	198B.4027	815 KAR 4:030
165A.320	13 KAR 1:020	198B.4033	815 KAR 4:030
176.430	401 KAR 10:030	198B.6401	815 KAR 22:010
183.861	602 KAR 50:030	198B.6405	815 KAR 22:010
183.865	602 KAR 50:030	198B.6409	815 KAR 22:010
183.867	602 KAR 50:030	198B.6411	815 KAR 22:010
	602 KAR 50:050	198B.6415	815 KAR 22:010
183.868	602 KAR 50:030	198B.6417	815 KAR 22:010
183.870	602 KAR 50:030	199.011	910 KAR 1:260
186	922 KAR 2:120		922 KAR 2:090
186.018	601 KAR 13:110		922 KAR 2:100
186.020	922 KAR 2:100		922 KAR 2:110
186.410	601 KAR 13:110		922 KAR 2:180
186.535	601 KAR 13:110	199.892	922 KAR 2:090
186.570	921 KAR 1:410	199.894	922 KAR 2:090
186.574	601 KAR 13:110		922 KAR 2:100

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 2:110	216B.010	900 KAR 6:060
	922 KAR 2:120		900 KAR 6:075
199.895	922 KAR 2:090		900 KAR 6:085
	922 KAR 2:100		900 KAR 6:090
199.896	922 KAR 2:090		900 KAR 6:130
	922 KAR 2:100	216B.010 - 216B.131	902 KAR 20:420
	922 KAR 2:110	216B.015	900 KAR 6:030
	922 KAR 2:120	216B.020	900 KAR 6:125
	922 KAR 2:180		900 KAR 6:130
	922 KAR 2:190	216B.040	900 KAR 6:125
199.897	922 KAR 2:100		900 KAR 6:130
	922 KAR 2:110	216B.061	900 KAR 6:085
199.898	922 KAR 2:090	216B.062	900 KAR 6:060
	922 KAR 2:100	216B.085	900 KAR 6:090
	922 KAR 2:110	216B.086	900 KAR 6:090
	922 KAR 2:120	216B.090	900 KAR 6:090
	922 KAR 2:180	216B.095	900 KAR 6:075
199.990	922 KAR 2:190		900 KAR 6:090
199.8982	922 KAR 2:100		900 KAR 6:125
	922 KAR 2:180	216B.130	900 KAR 6:030
199.8994	922 KAR 2:180	216B.400	201 KAR 20:411
205.201	910 KAR 1:190	216B.450	907 KAR 9:005
205.203	910 KAR 1:190		907 KAR 9:010
205.455	910 KAR 1:190	216B.455	900 KAR 6:030
	910 KAR 1:260		900 KAR 6:075
205.460	910 KAR 1:190		907 KAR 9:005
205.465	910 KAR 1:190		907 KAR 9:010
205.510	907 KAR 3:170	216B.459	907 KAR 9:005
205.520	907 KAR 1:145		907 KAR 9:010
	907 KAR 1:155	216B.990	900 KAR 6:030
	907 KAR 9:005		900 KAR 6:060
	907 KAR 9:010		900 KAR 6:075
	907 KAR 12:010		900 KAR 6:085
	907 KAR 12:020		900 KAR 6:090
205.559	907 KAR 3:170		900 KAR 6:130
205.560	907 KAR 3:170		902 KAR 20:420
	907 KAR 14:005	216B.0615	900 KAR 6:085
205.594	921 KAR 1:410	217	922 KAR 2:120
205.595	921 KAR 1:410	217.015	301 KAR 1:155
205.705	921 KAR 1:380	217B	302 KAR 27:050
205.710-205.800	921 KAR 1:001		302 KAR 28:020
	921 KAR 1:380		302 KAR 28:050
	921 KAR 1:400		302 KAR 29:020
205.710-205.802	921 KAR 1:410		302 KAR 29:060
205.990	921 KAR 1:400	217B.190	302 KAR 29:050
205.992	921 KAR 1:380	217B.515	302 KAR 29:050
205.5605	907 KAR 1:145	217B.520	302 KAR 29:050
	907 KAR 12:010	217B.525	302 KAR 29:050
205.5606	907 KAR 1:145	217B.545	302 KAR 29:050
	907 KAR 12:010	218A.010	902 KAR 55:110
205.5607	907 KAR 1:145	218A.172	201 KAR 9:001
	907 KAR 12:010		201 KAR 25:090
209.030	910 KAR 1:240	218A.175	201 KAR 9:250
209A.030	910 KAR 1:190		902 KAR 20:420
210.710	907 KAR 3:050	218A.202	201 KAR 9:230
210.720	907 KAR 3:050		902 KAR 55:110
210.730	907 KAR 3:050	218A.205	201 KAR 2:020
211.350-211.380	922 KAR 2:120		201 KAR 2:050
213.046	921 KAR 1:380		201 KAR 2:061
	921 KAR 1:400		201 KAR 5:010
214.010	922 KAR 2:100		201 KAR 5:030
	922 KAR 2:110		201 KAR 5:130
	922 KAR 2:180		201 KAR 9:081
214.036	922 KAR 2:100		201 KAR 9:200
	922 KAR 2:110		201 KAR 9:210
214.610	201 KAR 9:310		201 KAR 9:220
	201 KAR 22:040		201 KAR 9:240
214.615	201 KAR 8:532		201 KAR 9:260
	201 KAR 9:310		201 KAR 9:310
214.620	201 KAR 9:310		201 KAR 20:056
216.300	910 KAR 1:240		201 KAR 20:057
216.595	910 KAR 1:240		201 KAR 20:161
216.789	910 KAR 1:240		201 KAR 20:215
216.793	910 KAR 1:240		201 KAR 25:011

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 25:021	278.010	807 KAR 5:011
	201 KAR 25:031		807 KAR 5:076
	201 KAR 25:051	278.020	807 KAR 5:001
	201 KAR 25:090	278.030	807 KAR 5:011
218A.240	902 KAR 55:110		807 KAR 5:076
	906 KAR 1:160	278.160	807 KAR 5:011
218A.435	501 KAR 11:011		807 KAR 5:076
218A.1446	906 KAR 1:160	278.170	807 KAR 5:011
224.01-010	401 KAR 5:055	278.180	807 KAR 5:011
	401 KAR 5:060		807 KAR 5:076
	401 KAR 10:001	278.185	807 KAR 5:011
	401 KAR 10:026		807 KAR 5:076
	401 KAR 10:030	278.190	807 KAR 5:011
	401 KAR 10:031		807 KAR 5:076
	401 KAR 51:001	278.300	807 KAR 5:001
224.01-070	401 KAR 5:055	278.310	807 KAR 5:076
224.01-400	401 KAR 5:055	278.380	807 KAR 5:076
	401 KAR 5:060	281A.120	502 KAR 10:120
	401 KAR 10:001	281A.130	502 KAR 10:120
	401 KAR 10:026	281A.150	502 KAR 10:120
	401 KAR 10:030	281A.160	502 KAR 10:120
	401 KAR 10:031	281A.170	502 KAR 10:120
224.10-100	401 KAR 51:017	304.1-040	806 KAR 10:060
224.16-050	401 KAR 10:001	304.1-050	806 KAR 17:555
	401 KAR 10:026	304.2-110	806 KAR 10:060
	401 KAR 10:030	304.5-070	806 KAR 5:051
	401 KAR 10:031	304.7-361	806 KAR 7:110
224.16-070	401 KAR 10:001	304.7-405	806 KAR 7:110
	401 KAR 10:026	304.7-417	806 KAR 7:110
	401 KAR 10:030	304.7-419	806 KAR 7:110
	401 KAR 10:031	304.7-421	806 KAR 7:110
224.20-100	401 KAR 51:001	304.7-457	806 KAR 7:110
	401 KAR 51:052	304.7-469	806 KAR 7:110
224.20-110	401 KAR 51:001	304.9-105	806 KAR 9:211
	401 KAR 51:052	304.9-260	806 KAR 9:211
224.20-120	401 KAR 51:001	304.9-270	806 KAR 9:211
	401 KAR 51:052	304.9-330	806 KAR 9:211
224.70-100	401 KAR 5:055	304.9-430	806 KAR 9:211
	401 KAR 5:060	304.10-030	806 KAR 10:060
224.70-100 - 224.70-140	401 KAR 10:001	304.10-040	806 KAR 10:060
	401 KAR 10:026	304.10-140	806 KAR 10:060
	401 KAR 10:030	304.14-120	806 KAR 17:555
	401 KAR 10:031	304.14-430 - 304.14-450	806 KAR 17:555
224.70-120	401 KAR 5:055	304.17A-095 - 304.17A-0954	806 KAR 17:555
	401 KAR 5:060	304.040 - 304.075	201 KAR 8:532
224.71-100 - 224.71-145	401 KAR 10:001	309.331	201 KAR 45:010
	401 KAR 10:026		201 KAR 45:050
	401 KAR 10:030	309.335	201 KAR 45:010
	401 KAR 10:031		201 KAR 45:020
224.73-100 - 224.73-120	401 KAR 10:001	309.337	201 KAR 45:040
	401 KAR 10:026	309.339	201 KAR 45:050
	401 KAR 10:030	310.005	910 KAR 1:190
	401 KAR 10:031	310.021	910 KAR 1:190
224.99-010	401 KAR 5:055	310.031	910 KAR 1:190
	401 KAR 5:060	310.041	201 KAR 45:030
227.220	922 KAR 2:120	311.420	201 KAR 25:011
227.300	815 KAR 10:060	311.450	201 KAR 25:021
227.320	815 KAR 10:060		201 KAR 25:031
227.330	815 KAR 10:060	311.490	201 KAR 25:051
227.480	815 KAR 35:020	311.530 - 311.620	201 KAR 9:001
227.487	815 KAR 35:020		201 KAR 9:081
227.491	815 KAR 35:020		201 KAR 9:200
227.990	815 KAR 10:060		201 KAR 9:210
			201 KAR 9:220
227A.010	815 KAR 35:060		201 KAR 9:230
227A.060	815 KAR 35:060		201 KAR 9:240
227A.100	815 KAR 35:060		201 KAR 9:250
234.140	815 KAR 10:060		201 KAR 9:260
235.010	301 KAR 1:015	311.565	201 KAR 9:310
235.990	301 KAR 1:015	311.601	201 KAR 9:310
237.110	921 KAR 1:410	311.990	201 KAR 9:001
247.232	302 KAR 16:091		201 KAR 9:081
278	807 KAR 5:006		201 KAR 9:200

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 9:210	315.300	201 KAR 2:205
	201 KAR 9:220	315.335	201 KAR 2:205
	201 KAR 9:230	315.402	201 KAR 2:050
	201 KAR 9:240	315.512	201 KAR 2:350
	201 KAR 9:250	315.514	201 KAR 2:350
	201 KAR 9:260	315.518	201 KAR 2:050
311A.110	202 KAR 7:601		201 KAR 2:350
311A.115	202 KAR 7:601	315.520	201 KAR 2:050
311A.120	202 KAR 7:601		201 KAR 2:350
311A.130	202 KAR 7:601	315.0351	201 KAR 2:050
313.010	201 KAR 8:532		201 KAR 2:205
313.022	201 KAR 8:520	317.410	201 KAR 14:105
313.030	201 KAR 8:520	317.440	201 KAR 14:105
	201 KAR 8:532	318	922 KAR 2:120
313.035	201 KAR 8:532	318.010	815 KAR 20:020
313.060	201 KAR 8:540	318.015	815 KAR 20:020
313.080	201 KAR 8:532	318.054	815 KAR 20:034
313.085	201 KAR 8:540	318.130	815 KAR 20:020
313.100	201 KAR 8:520		815 KAR 20:034
313.130	201 KAR 8:532	318.150	815 KAR 20:020
313.245	201 KAR 8:532	318.160	815 KAR 20:191
314.01	922 KAR 2:100	318.200	815 KAR 20:020
314.011	201 KAR 20:056	319B.010	201 KAR 44:090
	201 KAR 20:057	319B.030	201 KAR 44:090
	201 KAR 20:161		201 KAR 44:120
	201 KAR 20:215	319B.040	201 KAR 44:400
	922 KAR 2:110	319B.130	201 KAR 44:110
	922 KAR 2:120	319C.050	201 KAR 43:050
	922 KAR 2:180	319C.060	201 KAR 43:050
314.031	201 KAR 20:161	320.220	201 KAR 5:010
314.041	201 KAR 20:230	320.250	201 KAR 5:010
	201 KAR 20:370	320.270	201 KAR 5:010
314.042	201 KAR 20:056	320.280	201 KAR 5:030
	201 KAR 20:057	322.060	201 KAR 18:040
	201 KAR 20:370	322.090	201 KAR 18:040
314.051	201 KAR 20:230	322.100	201 KAR 18:040
	201 KAR 20:370	322.110	201 KAR 18:040
314.071	201 KAR 20:161	322.120	201 KAR 18:040
	201 KAR 20:230	322.160	201 KAR 18:040
	201 KAR 20:370	322.170	201 KAR 18:040
314.073	201 KAR 20:215	322.290	201 KAR 18:192
	201 KAR 20:230	324A.010	201 KAR 30:030
314.091	201 KAR 20:056	324A.030	201 KAR 30:030
	201 KAR 20:161	324A.035	201 KAR 30:030
314.107	201 KAR 20:161		201 KAR 30:125
	201 KAR 20:370		201 KAR 30:180
314.142	201 KAR 20:411		201 KAR 30:190
314.161	201 KAR 20:056	324A.040	201 KAR 30:030
314.193	201 KAR 20:057		201 KAR 30:190
314.470	201 KAR 20:056	324A.045	201 KAR 30:125
	201 KAR 20:161	324A.052	201 KAR 30:030
314.991	201 KAR 20:161	327.010	201 KAR 22:001
	201 KAR 20:215		201 KAR 22:045
	201 KAR 20:411	327.040	201 KAR 22:053
315.010	201 KAR 2:040	327.050	201 KAR 22:040
	201 KAR 2:340	327.070	201 KAR 22:040
315.020	201 KAR 2:040		201 KAR 22:045
	201 KAR 2:205		201 KAR 22:053
	201 KAR 2:340	332.204	601 KAR 13:110
315.035	201 KAR 2:050	332.206	601 KAR 13:110
	201 KAR 2:340	332.210	601 KAR 13:110
315.036	201 KAR 2:050	334A.030	16 KAR 2:120
315.050	201 KAR 2:040	334A.033	16 KAR 2:120
	201 KAR 2:050	334A.035	16 KAR 2:120
315.060	201 KAR 2:050	334A.050	16 KAR 2:120
315.050	201 KAR 2:020	334A.060	16 KAR 2:120
315.110	201 KAR 2:050	334A.170	201 KAR 17:090
315.120	201 KAR 2:050	334A.200	201 KAR 17:110
315.131	201 KAR 2:061	339.230	815 KAR 35:060
315.191	201 KAR 2:040	367.83801	40 KAR 2:330
	201 KAR 2:061	367.83805	40 KAR 2:330
	201 KAR 2:205	367.83807	40 KAR 2:330
	201 KAR 2:340	382.800-382.860	418 KAR 1:040
315.210	201 KAR 2:030	403.160	921 KAR 1:400

KRS SECTION	REGULATION	KRS SECTION	REGULATION
403.210-403.240	921 KAR 1:001		907 KAR 1:155
	921 KAR 1:400		907 KAR 3:170
403.211	921 KAR 1:380		907 KAR 12:010
403.211-403.215	921 KAR 1:410		907 KAR 12:020
405.060	921 KAR 1:410	45 C.F.R.	921 KAR 1:001
405.405-405.991	921 KAR 1:410		921 KAR 1:380
405.430	921 KAR 1:380		921 KAR 1:400
	921 KAR 1:400		921 KAR 1:410
405.440	921 KAR 1:001		922 KAR 2:090
	921 KAR 1:400		922 KAR 2:100
405.467	921 KAR 1:380		922 KAR 2:110
405.520	921 KAR 1:001		922 KAR 2:120
	921 KAR 1:380		922 KAR 2:180
405.991	921 KAR 1:400	49 C.F.R.	502 KAR 10:120
406.021	921 KAR 1:380		807 KAR 5:006
	921 KAR 1:400		922 KAR 2:100
406.025	921 KAR 1:380		922 KAR 2:120
	921 KAR 1:400	7 U.S.C.	302 KAR 27:050
407.5101-407.5902	921 KAR 1:001		302 KAR 28:050
	921 KAR 1:380		302 KAR 29:060
	921 KAR 1:410	12 U.S.C.	201 KAR 30:125
415.174	907 KAR 3:170		201 KAR 30:190
415.184	907 KAR 3:170	15 U.S.C.	806 KAR 7:110
421.500-421-550	201 KAR 20:411		921 KAR 1:410
422.317	201 KAR 8:540	20 U.S.C.	703 KAR 5:225
	907 KAR 3:170	26 U.S.C.	102 KAR 1:225
			105 KAR 1:430
427.120	921 KAR 1:410		306 KAR 1:011
427.125	921 KAR 1:410	30 U.S.C.	401 KAR 10:030
431.213 - 431.270	501 KAR 16:290	33 U.S.C.	401 KAR 5:055
	501 KAR 16:310		401 KAR 5:060
	501 KAR 16:330	38 U.S.C.	102 KAR 1:225
431.300-431.307	907 KAR 3:170	42 U.S.C.	201 KAR 8:540
433.902	830 KAR 1:010		401 KAR 5:055
434.840-434.860	907 KAR 3:170		401 KAR 5:060
439	501 KAR 6:020		401 KAR 51:001
	501 KAR 6:130		401 KAR 51:017
	501 KAR 6:140		401 KAR 51:052
	501 KAR 6:230		806 KAR 17:555
	501 KAR 6:270		907 KAR 1:145
	501 KAR 6:999		907 KAR 1:155
440.50	907 KAR 3:170		907 KAR 12:010
446.010	418 KAR 1:010		907 KAR 12:020
447.272	907 KAR 1:155		910 KAR 1:190
	907 KAR 12:020		910 KAR 1:260
454.220	921 KAR 1:400		921 KAR 1:001
514	910 KAR 1:260		921 KAR 1:380
527.070	922 KAR 2:100		921 KAR 1:400
	922 KAR 2:120		921 KAR 1:410
	922 KAR 2:180		922 KAR 2:090
532.130 - 532.140	501 KAR 16:290		922 KAR 2:100
600.020	922 KAR 2:090		922 KAR 2:120
	922 KAR 2:100		922 KAR 2:180
610.170	921 KAR 1:380	49 U.S.C.	502 KAR 10:120
620.020	922 KAR 2:090		807 KAR 5:006
	922 KAR 2:100	Pub.L.110-245	105 KAR 1:430
	922 KAR 2:110	2010 ES Ky. Acts Ch. 1	806 KAR 17:545
	922 KAR 2:180	2011 Ky. Acts Ch. 82	807 KAR 5:100
620.030	922 KAR 2:100		807 KAR 5:110
	922 KAR 2:110	2012 Ky. Acts Ch. 1	201 KAR 8:520
	922 KAR 2:120		201 KAR 8:532
16 C.F.R.	922 KAR 2:100		201 KAR 8:540
	922 KAR 2:120	2012 Ky Acts Ch. 144	806 KAR 17:540
26 C.F.R.	102 KAR 1:225		806 KAR 17:545
29 C.F.R.	815 KAR 35:060		806 KAR 17:555
31 C.F.R.	921 KAR 1:410		
33 C.F.R.	401 KAR 5:055		
40 C.F.R.	401 KAR 5:055		
	401 KAR 5:060		
	401 KAR 10:001		
	401 KAR 51:001		
	401 KAR 51:017		
	401 KAR 51:052		
42 C.F.R.	907 KAR 1:145		

TECHNICAL AMENDMENT INDEX

Regulation Number	Effective Date	Regulation Number	Effective Date
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

201 KAR 20:310	7/23/2012		
201 KAR 44:020	8/28/2012		
503 KAR 1:100	10/19/12		
803 KAR 2:180	7/12/2012		
803 KAR 2:304	7/12/2012		
803 KAR 2:305	7/12/2012		
803 KAR 2:311	7/12/2012		
803 KAR 2:315	7/12/2012		
803 KAR 2:319	7/12/2012		
803 KAR 2:408	7/12/2012		
803 KAR 2:600	7/12/2012		
908 KAR 3:050	8/9/2012		
911 KAR 1:070	8/2/2012		
921 KAR 2:270	7/5/2012		
922 KAR 1:430	7/5/2012		

SUBJECT INDEX

AGRICULTURE, DEPARTMENT OF

Agriculture Pest Control
Certification; 302 KAR 27:050
Amusement Rides
Rides and attractions not included in the definition of amusement ride or attraction; 302 KAR 16:091
Ornamental Turf Lawn and Interior Plantscape Pest Control
Certification; 302 KAR 28:050
General provisions; 302 KAR 28:020
Structural Pest Control
Certification; 302 KAR 29:060
Commercial structural pest control and fumigation; 302 KAR 29:050
Structural pest control; general provisions; 302 KAR 29:020

AIR QUALITY, DIVISION OF

Attainment and Maintenance of the National Ambient Air Quality Standards
Definitions for 401 KAR Chapter 51; 401 KAR 51:001
Prevention of significant deterioration of air quality; 401 KAR 51:017
Review of new sources in or impacting upon nonattainment areas; 401 KAR 51:052

BUILDING CODE ENFORCEMENT, DIVISION OF

Elevator Safety
Elevator contractor licensing requirements; 815 KAR 4:030
Elevator mechanic licensing requirements; 815 KAR 4:040
Requirements for approval of continuing education courses and providers; 815 KAR 4:060

ECONOMIC DEVELOPMENT, CABINET FOR

Economic Development Finance Authority
Applications for Kentucky Incentive Program; 307 KAR 1:005
Kentucky Enterprise Initiative Act; 307 KAR 4:020
Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090; 306 KAR 1:011
Kentucky Business Investment Program
Repeal of 307 KAR 8:010; 307 KAR 8:011
Kentucky Reinvestment Act
Application for Kentucky Reinvestment Act Program; 307 KAR 9:010

EDUCATION, DEPARTMENT OF

Alternative Education Program
Alternative education programs; 704 KAR 19:002
Assessment and Accountability
Accountability Definitions and Procedures; 703 KAR 5:240
Procedures for the inclusion of special populations in the state-required assessment and accountability programs; 703 KAR 5:070
Repeal of 703 KAR 5:001, 020, 040, 050, 060, 130 and 160; 703 KAR 5:002
School and district accountability, recognition, support, and consequences; 703 KAR 5:225
General Administration
School health services; 702 KAR 1:160
Kentucky Assistive Technology Loan Corporation
General eligibility criteria for assistive technology loans; 789 KAR 1:010
Kindergartens and Nursery Schools
Common Kindergarten entry screener; 704 KAR 5:070
Office of Instruction
Commonwealth Diploma Program; 704 KAR 3:340
Minimum requirements for high school graduation; 704 KAR 3:305
Use of Restraint and Seclusion in Public Schools; 704 KAR 7:160

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Education, Department of; Titles 702-704 KAR (*See Education, Department of*)

EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates
Certification for school superintendent; 16 KAR 3:010
Advanced Certification and Rank
Examination prerequisites for principal certification; 16 KAR 6:030
Teaching Certificates
Emergency certification and out-of-field teaching; 16 KAR 2:120

ENERGY AND ENVIRONMENT CABINET

Environmental Protection, Department of
Air Quality, Division of (*See Air Quality, Division of; 401 KAR Chapter 51*)
Public Service Commission
Utilities
Alternative rate adjustment procedure for small utilities; 807 KAR 5:076
General Rules; 807 KAR 5:006
Rules of procedure; 807 KAR 5:001
Tariffs; 807 KAR 5:011
Water, Division of (*See Water Quality, Division of, 401 KAR Chapter 5*)

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Air Quality, Division of (*See Air Quality, Division of; 401 KAR Chapter 51*)
Antidegradation policy implementation methodology; 401 KAR 10:030
Definitions for 401 KAR Chapter 10; 401 KAR 10:001
Designation of uses of surface waters; 401 KAR 10:026
Surface water standards; 401 KAR 10:031

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems (*See Kentucky Retirement Systems, KAR Title 105*)
Kentucky Teacher' Retirement System; (*See Kentucky Teachers' Retirement System, KAR Title 102*)

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF

Fish
Boat and motor restrictions; 301 KAR 1:015
Commercial fishing gear; 301 KAR 1:146
Commercial fishing requirements; 301 KAR 1:155
Taking of fish by nontraditional fishing methods; 301 KAR 1:410
Game
Black bear; 301 KAR 2:300
Commercial guide license; 301 KAR 2:030
Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 2:225
Importation of game birds; 301 KAR 2:084
Shooting areas, dog training areas, commercial foxhound training enclosures; and bobwhite shoot-to-train; 301 KAR 2:041
Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049
Transportation and holding of live exotic wildlife; 301 KAR 2:082
Transportation and holding of live native wildlife; 301 KAR 2:081
Hunting and Fishing
License, tag, and permit fees; 301 KAR 3:022
Public use of Otter Creek Outdoor recreation area; 301 KAR 3:012
Wildlife
Scientific and educational collecting permits; 301 KAR 4:070

GENERAL GOVERNMENT CABINET

Agriculture, Department of (*See Agriculture, Department of; KAR Title 302 KAR*)
Applied Behavior Analysis Licensing Board
Requirements for supervision; 201 KAR 43:050
Barbering; Board of
Barbering school enrollment and postgraduate requirements; 201 KAR 14:105
Dentistry; Board of
Dental practices and prescription writing; 201 KAR 8:540

SUBJECT INDEX

Fees and Fines; 201 KAR 8:520
 Licensure of dental hygienists; 201 KAR 8:562
 Licensure of dentists; 201 KAR 8:532
 Kentucky Real Estate Appraisers Board (*See Kentucky Real Estate Appraisers Board, 201 KAR Chapter 30*)
 Licensed Diabetes Educators; Board of
 Code of ethics; 201 KAR 45:050
 Continuing education; 201 KAR 45:040
 Fees; 201 KAR 45:010
 Renewal, reinstatement and inactive status; 201 KAR 45:030
 Supervision and work experience; 201 KAR 45:020
 Marriage and Family Therapists, Board of
 Supervision of marriage and family therapist associates; 201 KAR 32:035
 Medical Licensure; Board of
 Continuing medical education; 201 KAR 9:310
 Criminal background checks required for all new applicants; 201 KAR 9:210
 Definitions for terms used in KRS 218A.172; 201 KAR 9:001
 Disciplinary proceedings; 201 KAR 9:081
 Emergency orders and hearings; appeals and other proceedings; 201 KAR 9:240
 Investigation and disposition of complaints; 201 KAR 20:161
 National practitioner data bank reports; 201 KAR 9:200
 Professional standards for prescribing and dispensing controlled substances; 201 KAR 9:260
 Registration and oversight of pain management facilities; 201 KAR 9:250
 Restriction upon dispensing of Schedule II Controlled Substances and Schedule III Controlled Substances Containing Hydrocodone; 201 KAR 9:220
 Required registration in the KASPER System; Legal Requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement; 201 KAR 9:230
 Military Affairs; Department of
 Nursing, Board of
 Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization; 201 KAR 20:056
 Applications for licensure; 201 KAR 20:370
 Alternative program; 201 KAR 20:450
 Continuing competency requirements; 201 KAR 20:215
 Investigation and disposition; 201 KAR 20:161
 Renewal; 201 KAR 20:230
 Scope and standards of practice of advanced practice registered nurses; 201 KAR 20:057
 Sexual assault nurse examiner program standards and credential requirements; 201 KAR 20:411
 Voluntary relinquishment of a license or credential; 201 KAR 20:510
 Ophthalmic Dispensers; Board of
 Licensing; application; examination; experience; renewal; and inactive status; 201 KAR 13:040
 Optometric Examiners; Board of
 Annual courses of study required; 201 KAR 5:030
 Application for licensure; endorsement; 201 KAR 5:010
 Controlled substances; 201 KAR 5:130
 Pharmacy, Board of
 Examination; 201 KAR 2:020
 Home medical equipment service providers; 201 KAR 2:350
 Licenses and permits; fees; 201 KAR 2:050
 License transfer; 201 KAR 2:030
 Pharmacist-in-charge; 201 KAR 2:205
 Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing complaints; 201 KAR 2:061
 Registration of pharmacist interns; 201 KAR 2:040
 Special pharmacy permit for clinical practice; 201 KAR 2:340
 Physical Therapy, Board of (*See Physical Therapy, Board of, 201 KAR Chapter 22*)
 Podiatry; Board of
 Annual renewal of licenses, fees; 201 KAR 25:021
 Approved schools; examination application; fees; 201 KAR 25:011
 Continuing education; 201 KAR 25:031

Prescribing and dispensing controlled substances; 201 KAR 25:090
 Professional engineers and land surveyors, Board of Licensure for
 Continuing professional development for professional land surveyors; 201 KAR 18:192
 Fees; 201 KAR 18:040
 Prosthetics, Orthotics, and Pedorthics; Board of
 Inactive status; 201 KAR 44:100
 Licensure by endorsement; 201 KAR 44:110
 Post residency registration; 201 KAR 44:120
 Procedure for complaints and hearings involving licenses: temporary suspension; 201 KAR 25:051
 Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013; 201 KAR 44:090
 Speech-Language pathology and audiology; Board of
 Continuing education requirements; 201 KAR 17:090
 Telehealth and telepractice; 201 KAR 17:110
 State Investment Commission
 Guidelines for money market instruments; 200 KAR 14:091
 Qualified investments; 200 KAR 14:011
 Repurchase agreement; 200 KAR 14:081
 Military Assistance Trust Funds
 National Guard adoption benefit program; 106 KAR 2:030

HEALTH AND FAMILY SERVICES, CABINET FOR

Aging and Independent Living, Department for
 Aging Services
 Nutrition program for older persons; 910 KAR 1:190
 Audits and Investigations; Division of
 Monitoring system for prescription controlled substances; 902 KAR 55:110
 Certificate of Need
 Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units; 900 KAR 6:125
 Certificate of Need criteria for physician exemption; 900 KAR 6:130
 Certificate of Need expenditure minimums; 900 KAR 6:030
 Certificate of Need filing, hearing, and show cause hearing; 900 KAR 6:090
 Certificate of Need nonsubstantive review; 900 KAR 6:075
 Implementation of outstanding Certificates of Need if ownership has changed; 900 KAR 6:085
 Timetable for submission of Certificate of Need applications; 900 KAR 6:060
 Child care; Division of
 Certification of family child-care homes; 922 KAR 2:100
 Child-care center health and safety standards; 922 KAR 2:120
 Child-care center licensure; 922 KAR 2:090
 Child-care center provider requirements; 922 KAR 2:110
 Civil penalties; 922 KAR 2:190
 Requirements for registered child care providers in the Child Care Assistance program; 922 KAR 2:180
 Commissioner's Office
 Telehealth consultation coverage and reimbursement; 907 KAR 3:170
 Community Alternatives; Division of
 Certification of assisted-living communities; 910 KAR 1:240
 Kentucky Family Caregiver program; 910 KAR 1:260
 New supports for community living waiver service and coverage policies; 907 KAR 12:010
 Data Reporting and Public Use Data Sets
 Data reporting by health care providers; 900 KAR 7:030
 Health Care; Division of
 Pain management facilities; 902 KAR 20:420
 Income Support; Department for
 Child support collection and enforcement; 921 KAR 1:410
 Child support enforcement program application and intergovernmental process; 921 KAR 1:380
 Definitions; 921 KAR 1:001
 Establishment, review, and modification of child support and medical support orders; 921 KAR 1:400
 Inspector General; Office of

SUBJECT INDEX

Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine; 906 KAR 1:160
Kentucky Health Information

Kentucky health information exchange participation; 900 KAR 9:010

Medicaid Services; Department for 907 KAR Chapter 1 (*See Medicaid Services; Department of*)

Health care-acquired conditions and other provider preventable conditions; 907 KAR 14:005

Mental Health and Mental Retardation Services

Per diem rates; 908 KAR 3:050

HOUSING, BUILDINGS AND CONSTRUCTION, DEPARTMENT OF

Building Code Enforcement, Division of; 815 KAR Chapters 4-8

(*See Building Code Enforcement, Division of*)

Electrical

Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060; 815 KAR 35:060

Fire Protection Sprinkler Contractors and Inspectors

Requirements for approval of continuing education courses and providers; 815 KAR 22:010

Fire Prevention; Division of

Kentucky standards of safety; 815 KAR 10:060

HVAC; Division of

Requirements for approval of continuing education courses and providers; 815 KAR 8:060

Plumbing

Joints and connections; 815 KAR 20:100

Minimum fixture requirements; 815 KAR 20:191

Parts or materials list; 815 KAR 20:020

Requirements for approval of continuing education courses and providers; 815 KAR 20:034

INSURANCE, DEPARTMENT OF

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:211. Repeal of 806 KAR 9:210

Authorization of Insurers and General Requirements

Risk-based capital for insurers; 806 KAR 3:190

Health Insurance Contracts

ICARE Program employer eligibility, application process, and requirements; 806 KAR 17:545

ICARE Program high-cost conditions; 806 KAR 17:540

ICARE Program requirements; 806 KAR 17:555

Investments

Derivative instruments; 806 KAR 7:110

Kinds of Insurance; Limits of Risk; Reinsurance

Repeal of 806 KAR 5:050; 806 KAR 5:051

Surplus Lines

Cancellation of financial responsibility; 806 KAR 10:060

JUSTICE AND PUBLIC SAFETY CABINET

Kentucky State Police; Department of; 502 KAR Chapter 11 (*See Kentucky State Police; Department of*)

Asset Forfeiture

Repeal 501 KAR 11:010; 501 KAR 11:011

Capital Punishment

Lethal injection protocols; 501 KAR 16:330

Pre-execution medical actions; 501 KAR 16:310

Preliminary and post-execution procedures concerning condemned person; 501 KAR 16:290

Office of the Secretary

Bell County Forestry Camp; 501 KAR 6:140

Corrections policies and procedures; 501 KAR 6:020

Corrections secured policies and procedures; 501 KAR 6:999

Little Sandy Correctional Complex; 501 KAR 6:230

Luther Luckett Correctional Complex; 501 KAR 6:050

Probation and parole policies and procedures; 501 KAR 6:280

Probation and parole policies and procedures; 501 KAR 6:270

Procedures for recommendation of early termination of probation and review of compliance of supervised individuals; 501 KAR 6:260

Roederer Correctional Complex; 501 KAR 6:110

Western Kentucky Correctional Complex; 501 KAR 6:130

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services

Training, education, and continuing education; 202 KAR 7:601

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Division of Student and Administrative Services

Kentucky Loan Program; 11 KAR 3:100

KENTUCKY HORSE RACING COMMISSION

Harness

Disciplinary measures and penalties; 811 KAR 1:095

Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 1:093

Medication; testing procedures; prohibited practices; 811 KAR 1:090

Quarter Horse, Appaloosa, and Arabian Racing

Disciplinary measures and penalties; 811 KAR 2:100

Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 2:093

Medication; testing procedures; prohibited practices; 811 KAR 2:096

Thoroughbred Racing

Disciplinary measures and penalties; 810 KAR 1:028

Drug, medication, and substance classification schedule and withdrawal guidelines; 810 KAR 1:040

Medication; testing procedures; prohibited practices; 810 KAR 1:018

KENTUCKY REAL ESTATE APPRAISERS BOARD

Continuing education for appraisers; 201 KAR 30:125

Distance education standards; 201 KAR 30:180

Educational requirements for certification; 201 KAR 30:190

Types of appraisers required in federally-related transactions; certification and licensure; 201 KAR 30:030

KENTUCKY RETIREMENT SYSTEMS

General Rules

401(h) account established under 26 USC 401(h); 105 KAR 1:420

Federal taxation limitation year; 105 KAR 1:400

General compliance with federal tax laws; 105 KAR 1:430

KENTUCKY STATE POLICE; DEPARTMENT OF

Driver Training

Hazardous materials endorsement requirements; 502 KAR 10:120

KENTUCKY TEACHERS' RETIREMENT SYSTEM

General Rules

General compliance with federal tax laws; 102 KAR 1:225

LABOR CABINET

Workplace Standards, Department of; 803 Chapter 2 (*See Workplace Standards, Department of*)

MEDICAID SERVICES; DEPARTMENT FOR

Payments for supports for community living services for an individual with an intellectual or developmental disability; 907 KAR 1:155

Reimbursement for New Supports for Community Living Psychiatric Residential Treatment Facility Services and Reimbursement

Level I and II psychiatric residential treatment facility service and coverage policies; 907 KAR 9:005

Reimbursement for Level I and II psychiatric residential treatment facility services; 907 KAR 9:010

Waiver services; 907 KAR 12:020

Quality Living; Division of

Kentucky Family Caregiver Program

Supports for community living services for an individual with an intellectual or developmental disability; 907 KAR 1:145

SUBJECT INDEX

NATURAL RESOURCES; DEPARTMENT FOR

Bond and Insurance Requirements
General bonding provisions; 405 KAR 10:015
General requirements for liability insurance; 405 KAR 10:030
Repeal of 405 KAR 10:010 and 10:020; 405 KAR 10:011E
Performance Standards for Surface Mining Activities
Contemporaneous reclamation; 405 KAR 16:020
Technical and Administrative Support; Division of
Administrative procedures of the board; 418 KAR 1:020
Definitions for 418 KAR Chapter 1; 418 KAR 1:010
Grant applications; 418 KAR 1:040
Repeal of 418 KAR 1:030; 418 KAR 1:031
Management; 418 KAR 1:060
Procedures for acquisition of land; 418 KAR 1:050
Remedies; 418 KAR 1:070

OFFICE OF THE INSPECTOR GENERAL

Division of Consumer Protection
Mold remediation; 40 KAR 2:330

PHYSICAL THERAPY, BOARD OF

Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 22:053
Continued competency requirements and procedures; 201 KAR 22:045
Definitions for 201 KAR Chapter 22; 201 KAR 22:001
Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant; 201 KAR 22:040

PERSONNEL CABINET

Office of the Secretary
Plan Year handbook for the Public Employee Health Insurance Program; 101 KAR 2:210

POSTSECONDARY EDUCATION; COUNCIL ON

Nonpublic College
Private college licensing; 13 KAR 1:020

PUBLIC PROTECTION CABINET

Alcoholic Beverage Control, Division of
Entertainment destination center license; 804 KAR 4:370
Housing, Buildings, and Construction, Department of 815 KAR Chapter 25 (*Housing, Buildings, and Construction, Department of*)
Insurance, Department of; Title 806 Chapters 2, 14-17 (*See Insurance, Department of*)
Kentucky Horse Racing Commission; KAR Titles 810 and 811 (*See Kentucky Horse Racing Commission*)
Secondary Metals Recyclers
Forms for application, certificate of registration and fees; 830 KAR 1:010

REVENUE, DEPARTMENT OF

Ad Valorem Tax; Administration
Installment payment plan guidelines for third party purchasers of certificates of delinquency; 103 KAR 5:220
Forms
Kentucky Tax Amnesty Application; 103 KAR 3:060
Sales and Use Tax; Administration and Accounting
Disaster area relief sales and use tax refunds; 103 KAR 31:170

TRANSPORTATION CABINET

Aviation; Department of
Airport zoning map; 602 KAR 50:050
Jurisdiction of the Kentucky Airport Zoning Commission; 602 KAR 50:030
Driver Improvement
Driver education programs; 601 KAR 13:110
Motor Carriers; Division of
Overweight or over dimensional farm equipment; 601 KAR 1:019
Special overweight or overdimensional motor vehicle load permits; 601 KAR 1:018
Motor Vehicle Tax
Procedures for inspecting vehicles; 601 KAR 9:090

TOURISM, ARTS AND HERITAGE CABINET

Fish and Wildlife Resources, Title 301 Chapters 1-4 (*See Fish and Wildlife Resources*)
Parks; Department of
Campgrounds; 304 KAR 1:040
Kentucky Proud Promotion Program; 304 KAR 1:080

WATER, DIVISION OF

Designation of uses of surface water, "
KPDES application requirements; 401 KAR 5:060
Scope and applicability of the KPDES Program; 401 KAR 5:055

WORKPLACE STANDARDS, DEPARTMENT OF

Occupational Safety and Health
Adoption of 29 C.F.R. Part 1926.250-252; 803 KAR 2:407
Commercial diving operations; 803 KAR 2:319
Fire protection and prevention; 803 KAR 2:405
General; 803 KAR 2:300
General environmental controls; 803 KAR 2:309
Hazardous materials; 803 KAR 2:307
Maritime employment; 803 KAR 2:500
Materials handling and storage; 803 KAR 2:313
Occupational health and environmental controls; 803 KAR 2:403
Special industries; 803 KAR 2:317
Toxic and hazardous substances; 803 KAR 2:320 and 2:425
Welding, cutting, and brazing; 803 KAR 2:316