ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 4
WEDNESDAY, OCTOBER 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, September 15, 2014.

ARRS – OCTOBER 14, 2014 TENTATIVE AGENDA 713
REGULATION REVIEW PROCEDURE 716

EMERGENCIES
Personnel Cabinet 717
Department of Fish and Wildlife Resources 719
Department for Medicaid Services 721

AS AMENDED
Education Professional Standards Board 736
Board of Pharmacy 738
Real Estate Commission 740
Department of Agriculture 743
Law Enforcement Council 747
Commission on Proprietary Education 748
Department of Alcoholic Beverage Control 761
Public Service Commission 763
CHFS: Office of Health Policy 783
CHFS: Department for Public Health 784
CHFS: Department for Medicaid Services 796

AMENDED AFTER COMMENTS
Division of Water 807
CHFS: Department for Public Health 809

PROPOSED AMENDMENTS
Kentucky Higher Education Assistance Authority 817
Personnel Cabinet 845
Kentucky Heritage Council 847
Department of Fish and Wildlife Resources 854
Department of Corrections 862
Department of Insurance 864
CHFS: Department for Public Health 867
CHFS: Department for Medicaid Services 959

NEW ADMINISTRATIVE REGULATIONS
CHFS: Department for Medicaid Services 965

ARRS Report 973
OTHER COMMITTEE REPORTS 978

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..... **D - 2**
KRS Index ..... **D - 9**
Technical Amendments ..... **D - 14**
Subject Index ..... **D - 15**

MEETING NOTICE: EAARS

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet October 6, 2014, at 1:00 p.m. in room 131 Capitol Annex.

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet October 14, 2014, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **713-715** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2014 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 41, Kentucky Register, page 318 (short form: 41 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)
© 2014 Legislative Research Commission, All Rights Reserved

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: $120 (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.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Representative Gregory D. Stumbo
House Speaker

Senate and House Members

Senator Katie Kratz Stine
President Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Senator R.J. Palmer II
Minority Floor Leader

Senator Daniel Seum
Majority Caucus Chairman

Senator Johnny Ray Turner
Minority Caucus Chairman

Senator Brandon Smith
Majority Whip

Senator Jerry P. Rhoads
Minority Whip

Representative Larry Clark
Speaker Pro Tempore

Representative Rocky Adkins
Majority Floor Leader

Representative Jeffrey Hoover
Minority Floor Leader

Representative Sannie Overly
Majority Caucus Chairman

Representative Bob DeWeese
Minority Caucus Chairman

Representative Tommy Thompson
Majority Whip

Representative John Carney
Minority Whip

Marcia Seiler, Acting Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Ernie Harris, Co-Chair
Representative Mary Lou Marzian, Co-Chair
Senator Perry B. Clark
Senator Sara Beth Gregory
Senator Alice Kerr
Representative Robert Damron
Representative Jimmie Lee
Representative Tommy Turner

Staff

Donna Little
Emily Caudill
Sarah Amburgey
Emily Harkenrider
Karen Howard
Carrie Klaber
Angela Bertholf
Betsy Cupp

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, OCTOBER 14, 2014, at 1:00 p.m., Room 149 Capitol Annex

EDUCATION PROFESSIONAL STANDARDS BOARD

Teaching Certificates

16 KAR 2:120. Emergency certification and out-of-field teaching.

STATE BOARD OF ELECTIONS

Statewide Voter Registration

31 KAR 3:030. Voting precinct and address of overseas voter whose last place of residence in the Commonwealth is no longer a recognized residential address.

Forms and Procedures

31 KAR 4:130 & E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically. ("E" expires 1/18/2015)

31 KAR 4:140 & E. Submission of the federal postcard application via electronic mail. ("E" expires 1/18/2015)

Voting

31 KAR 5:010 & E. Use of the federal write-in absentee ballot. ("E" expires 1/18/2015)

FINANCE AND ADMINISTRATION CABINET
Commonwealth Office of Technology

General Administration

200 KAR 1:015. Data Breach Notification Forms.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

Board

201 KAR 1:190. Examination sections, applications, and procedures.

Board of Optometric Examiners

Board

201 KAR 5:055. Telehealth.

Board of Embalmers and Funeral Directors

Board

201 KAR 15:015. Per diem compensation of board members. (Deferred from September)

Real Estate Appraisers Board

Board

201 KAR 30:125. Continuing education for appraisers.

201 KAR 30:180. Distance education standards.

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

Board of Licensure for Marriage and Family Therapists

Board

201 KAR 32:035. Supervision of marriage and family therapist associates.

Board of Licensure and Certification for Dietitians and Nutritionists

Board

201 KAR 33:010. Fees.

Board of Licensed Professional Counselors

Board

201 KAR 36:060. Qualifying experience under supervision. (Deferred from September)

201 KAR 36:080. Inactive and retired licensure status. (Deferred from September)

Kentucky Department of Veterans' Affairs
Veterans' Program Trust Fund

Fund

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

Fish

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water

Public Water Supply

401 KAR 8:200. Microbiological monitoring. (Amended After Comments)

401 KAR 8:300. Lead and copper. (Deferred from September)

401 KAR 8:700. Bottled water. (Deferred from September)

Department for Natural Resources
Division of Mine Permits

Permits

405 KAR 8:030 & E. Surface coal mining permits. ("E" expires 2/2/2015)

405 KAR 8:040 & E. Underground coal mining permits. ("E" expires 2/2/2015)

Office of the Reclamation Guaranty Fund

Bond and Insurance Requirements

405 KAR 10:025 & E. Extension of performance bond subsidization. ("E" expires 12/27/2014) (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:060. Northpoint Training Center. (Deferred from September)

Law Enforcement Council

Council
503 KAR 1:070. Training: qualifications; application.
503 KAR 1:080. Certification of schools.
503 KAR 1:090. Approval of course curriculums.
503 KAR 1:100. Certification of instructors.

Department of Juvenile Justice

Child Welfare
505 KAR 1:110. Department of Juvenile Justice Policies and Procedures: program services. (Amended After Comments) (Deferred from September)

TRANSPORTATION CABINET
Kentucky Bicycle and Bikeways Commission

Motorcycle and Bicycle Safety
601 KAR 14:020. Bicycle Safety standards. (Not Amended After Comments) (Deferred from June)

Department of Highways
Division of Maintenance

Billboards
603 KAR 10:001. Definitions. (Amended After Comments) (Deferred from May)
603 KAR 10:010. Static advertising devices. (Amended After Comments) (Deferred from May)
603 KAR 10:020. Electronic advertising devices. (Amended After Comments) (Deferred from May)
603 KAR 10:030. Removal of vegetation related to advertising devices. (Amended After Comments) (Deferred from May)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education

General Administration
702 KAR 1:160. School health services.

School Terms, Attendance and Operation
702 KAR 7:140. School calendar.

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission

Procedures
750 KAR 1:030. Emergency and Targeted Investment Fund.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Local Administrators
804 KAR 10:030. Local government regulatory license fees.

DEPARTMENT OF INSURANCE
Financial Standards and Examination Division

Insurance Holding Company Systems
806 KAR 37:010. Insurance holding company systems.

Horse Racing Commission

Thoroughbred Racing
810 KAR 1:017. Objections and complaints.
810 KAR 1:027. Entries, subscriptions, and declarations.

Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:070. Entries, subscriptions and declarations.
811 KAR 2:090. Objections and complaints.

Office of Occupations and Professions
Board of Home Inspectors

Board
815 KAR 6:001. Definitions for 815 KAR Chapter 6.
815 KAR 6:010. Home inspector licensing requirements and maintenance of records.
815 KAR 6:030. Home inspector standards of conduct.
815 KAR 6:040. Home inspector prelicensing providers.
815 KAR 6:080. Continuing education provider.
815 KAR 6:090. Procedures for complaints and administrative hearings.
815 KAR 6:100. Compensation.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

Certificate of Need
900 KAR 6:055. Certificate of Need forms. (Amended After Comments) (Deferred from September)
900 KAR 6:060. Timetable for submission of certificate of need applications.
900 KAR 6:065. Certificate of need application process.
900 KAR 6:075. Certificate of Need nonsubstantive review. (Amended After Comments) (Deferred from September)

Department for Public Health
Division of Epidemiology and Health Planning

Communicable Diseases
902 KAR 2:055. Immunization data reporting and exchange.

Division of Health Care

Health Services and Facilities
902 KAR 20:008. License procedures and fee schedule. (Amended After Comments)

Department for Medicaid Services
Commissioner's Office

Payment and Services
907 KAR 3:005 & E. Coverage of physicians' services.

Division of Policy and Operations

Hospital Service Coverage and Reimbursement
907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement. (Amended After Comments) (Deferred from April)

Behavioral Health
907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15. ("E" expires 1/18/2015)
907 KAR 15:020 & E. Coverage provisions and requirements regarding services provided by behavioral health service organizations. ("E" expires 1/18/2015)
907 KAR 15:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations. ("E" expires 1/18/2015)

Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Administration and Financial Management

Institutional Care
908 KAR 3:050. Per diem rates.
908 KAR 3:060. "Means test" for determining patient liability.

Department for Community Based Services
Division of Family Support

Supplemental Nutrition Assistance Program
921 KAR 3:035. Certification process. (Not Amended After Comments)
921 KAR 3:090. Simplified assistance for the elderly program or "SAFE".

Division of Protection and Permanency

Child Welfare
922 KAR 1:360 & E. Private child care placement, levels of care, and payment. ("E" expires 1/28/2015)

Division of Child Care

Day Care
922 KAR 2:160 & E. Child Care Assistance Program. ("E" expires 1/28/2015)

Division of Protection and Permanency

Adult Services
922 KAR 5:070 & E. Adult protective services. ("E" expires 1/19/2015)
922 KAR 5:120 & E. Caregiver misconduct registry and appeals. ("E" expires 1/19/2015)

REMOVED FROM OCTOBER 2014 AGENDA

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors

Board
201 KAR 36:070. Education and examination requirements. (Comments Received, SOC ext.)

Board of Prosthetics, Orthotics, and Pedorthics

Board
201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter. (Withdrawn by agency, 9/19/14)
201 KAR 44:110. Licensure by endorsement. (Withdrawn by agency, 9/19/14)
201 KAR 44:120. Post residency registration. (Withdrawn by agency, 9/19/14)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care

Health Services and Facilities
902 KAR 20:430 & E. Facilities specifications, operation and services; behavioral health services organizations. ("E" expires 2/10/2015) (Comments Received, SOC ext.)
902 KAR 20:440 & E. Facilities specifications, operation and services; residential crisis stabilization units. ("E" expires 2/10/2015) (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.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2015 plan year handbook for the self-insured plan offered to the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2015 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2014. This administrative regulation incorporates by reference the 2015 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2014 plan year. The existing language in the Benefits Selection Guide for the 2014 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2015 replaces this emergency administrative regulation.

STEVEN BESHEAR, Governor
TIM LONGMEYER, Secretary

PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)

101 KAR 2:210E. 2014 and 2015 Plan Year Handbooks [~~Handbook~~] for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254
STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)
EFFECTIVE: September 15, 2104
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2014 and 2015 Plan Years[~~Year~~] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2014 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2015 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2015 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2015.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2014 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2014 edition; and

(b) "2015 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2015 edition[~~, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary
APPROVED BY AGENCY: September 11, 2014
FILED WITH LRC: September 15, 2014 at 10 a.m.
CONTACT PERSON: Sharron Burton, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2015 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2015.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2015 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute authorizing the self-insured plan and the statute mandating the promulgation of the administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2015 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS

18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2014 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2014. The amendment adds and incorporates by reference the 2015 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan for plan year 2015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance and deductibles for each plan provided to public employees under the Public Employee Health Insurance Program for plan year 2015. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2015 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2015 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 182,813 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 287,585 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by affected entities to comply with the incorporation of the 2015 plan year handbook in the administrative regulation. The 2015 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health plans offered for the 2015 plan year. Specifically, the 2015 plan year handbook will provide information about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2015 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will give notice to participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program regarding employer and employee premium contributions for health insurance coverage in 2015. There is no direct cost impact resulting from incorporating the 2015 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2015, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. The Public Employee Health Insurance Program will have minor employer and employee contribution adjustments for plan year 2015. Plan year 2015 will have a two (2) percent budgeted employer contribution.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees participating in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(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 not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law, an amended administrative regulation will be promulgated in 2015 and each subsequent plan year.

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

Revenues (+/-):

Expenditures (+/-)

Other Explanation:

STATEMENT OF EMERGENCY
301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This emergency administrative regulation will be filed with an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
GREGORY K. JOHNSON, Commissioner

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

EFFECTIVE: August 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-six (56)[~~fifty-four (54)~~] consecutive days;

2. Thanksgiving Day for eleven (11)[~~nine (9)~~] consecutive days; and

3. The Saturday before[~~after~~] Christmas for twenty-three (23)[~~seven (7)~~] consecutive days;

(b) Woodcock, beginning on November 1 for forty-five (45) consecutive days;

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck[~~and teal~~], beginning on the third Wednesday in September for five (5) consecutive days;

(e) Teal, beginning on the third Wednesday in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common moorhen, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g)[~~(f)~~] Canada goose, beginning September 1 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Public land in the Ballard Zone;

2. Public land in the West-Central Goose Zone; and

3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:

1. The head; or

2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and

2. Possession limit of nine (9).

(d) Common snipe:

1. Daily limit of eight (8); and

2. Possession limit of twenty-four (24).

(e) Virginia and sora rail, singly or in aggregate:

1. Daily limit of twenty-five (25); and

2. Possession limit of seventy-five (75).

(f) Common moorhen and purple gallinule, singly or in aggregate:

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45).

(g) Wood duck and teal:

1. Daily limit of six (6)[~~four (4)~~], which shall not include more than two (2) wood ducks; and

2. Possession limit of eighteen (18)[~~twelve (12)~~], which shall not include more than six (6) wood ducks.

(h) Canada goose:

1. Daily limit of five (5)[~~three (3)~~]; and

2. Possession limit of fifteen (15)[~~nine (9)~~].

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the

following attached to the bird:
(a) The head; or
(b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:
(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and
(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
(2) If hunting dove on private land, a person shall hunt:
(a) Between 11 a.m. and sunset on September 1; and
(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or
(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:
(1) Hunting waterfowl or doves; or
(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:
(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;
(b) Hunt in an area marked by a sign as closed to hunting; or
(c) Enter an area marked by a sign as closed to the public.
(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:
(a) Ballard WMA;
(b) Boatwright WMA;
(c) Doug Travis WMA;
(d) Duck Island WMA;
(e) Kaler Bottoms WMA;
(f) Kentucky River WMA;
(g) Ohio River Islands WMA;
(h) Sloughs WMA;
(i) South Shore WMA;
(j) Yatesville Lake WMA; and
(k) A WMA wetland management unit that is posted by sign.
(3) At Ballard WMA, a person shall not hunt:
(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
(b) Woodcock.
(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:
(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
(b) Woodcock.
(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:
(a) Dove or snipe after October 13; or
(b) Woodcock.
(6) At Grayson Lake WMA, a person shall not hunt:
(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
(b) On Deer Creek Fork; or
(c) On Camp Webb property or the state park, except for youths drawn for any department quota dove hunt on Camp Webb property in September.
(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.
(8) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.
(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:
(a) The Greenbrier Creek embayment; and
(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.
(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: August 8, 2014
FILED WITH LRC: August 22, 2014 at 9 a.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2014–2015 migratory bird seasons in accordance with the USFWS.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.
(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 twenty (20) additional days to the mourning dove season, provide four (4) additional "teal only" hunting days at the end of the current wood duck/teal season, increase the teal daily bag limit from four to six, and the wood duck/teal possession limit from twelve (12) to eighteen (18). It will also increase the Canada goose daily bag limit from three (3) to five (5) and the possession limit from twelve (12) to fifteen (15) during the September Canada goose season. All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and within the USFWS required frameworks.
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase migratory bird hunting opportunity for early migratory bird hunting

seasons, as defined by the dates in which the hunting season may open as early as September 1.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters will have additional hunting opportunity for mourning dove, teal, and Canada geese. Mourning dove hunters will have twenty (20) additional days added to the current hunting season, waterfowl hunters will have four (4) more days of "teal only" hunting beyond the traditional five (5)-day wood duck/teal season, and will be allowed to add two (2) more teal and two (2) more Canada Geese to their daily bag limit during the respective seasons for these two (2) species.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all waterfowl bird hunters.

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 Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. The amended regulation is not more restrictive than the federal frameworks.

STATEMENT OF EMERGENCY
907 KAR 3:005E

This emergency administrative regulation is being promulgated to eliminate the option for a Medicaid provider to provide Medicaid cover services to a Medicaid recipient on a "non-Medicaid" (cash-on-the-side) basis. This action must be taken on an emergency basis to protect the health, safety, and welfare of Medicaid recipients. The current administrative regulation contains an option for Medicaid providers to provider Medicaid-covered services to Medicaid recipients on a non-Medicaid basis. Via this option some providers could exploit Medicaid recipients by selecting which services to provide on a Medicaid basis and on a non-Medicaid basis in order to obtain a higher payment (if they were dissatisfied with Medicaid's reimbursement) from the recipient on a cash-only basis. DMS has learned that suboxone (an opioid addiction treatment drug) and associated treatment has been provided on a cash-only basis and at a high price to individuals. Individuals addicted to opioids are vulnerable to exploitation. Other Medicaid

recipients could be vulnerable regarding other service as well; consequently, DMS is removing this option from the administrative regulation to prevent such exploitation. This emergency administrative regulation differs from the emergency administrative regulation that was filed with the Legislative Research Commission on December 26, 2013 in that it removes the option for a Medicaid provider to provide Medicaid covered services to a Medicaid recipient on a "non-Medicaid" (cash-on-the-side) basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)

907 KAR 3:005E. Coverage of physicians' services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152, 415.174, 415.184, 440.50, 447.26, 45 C.F.R. 160, 164, 42 U.S.C. 1320 - 1320d-8, 1396a(a)(19), (30)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

EFFECTIVE: August 20, 2014

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 coverage provisions and requirements relating to physicians' services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Behavioral health practitioner under supervision" means an individual who is:

(a) A licensed psychological associate;

(b) A licensed professional counselor associate;

(c) A certified social worker;

(d) A marriage and family therapy associate;

(e) A licensed professional art therapist associate;

(f) A licensed assistant behavior analyst;

(g) A physician assistant; or

(h) A certified alcohol and drug counselor.

(3) "Common practice" means an arrangement through which a physician assistant administers health care services under the supervision of a physician via a supervisory relationship that has been approved by the Kentucky Board of Medical Licensure.

(4)[~~(3)~~] "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(5)[~~(4)~~] "Department" means the Department for Medicaid Services or its designee.

(6)[~~(5)~~] "Designated controlled substance provider" means the provider designated as a lock-in recipient's controlled substance prescriber:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(7)[~~(6)~~] "Designated primary care provider" means the provider designated as a lock-in recipient's primary care provider:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(8)[~~(7)~~] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(9)[~~(8)~~] "Early and periodic screening and diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(10)[~~(9)~~] "Emergency care" means:

(a) Covered inpatient or outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(11)[~~(10)~~] "Enrollee" means a recipient who is enrolled with a managed care organization.

(12)[~~(11)~~] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13)[~~(12)~~] "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(14)[~~(13)~~] "Graduate medical education program" or "GME Program" means:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b).

(15)[~~(14)~~] "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(16)[~~(15)~~] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(17)[~~(16)~~] "Lock-in recipient" means:

(a) A recipient enrolled in the lock-in program in accordance with 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.

(18)[~~(17)~~] "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the APRN's provider number.

(19)[~~(18)~~] "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(20)[~~(19)~~] "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.

(21)[~~(20)~~] "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the

recipient to the provider.

(22)[~~(21)~~] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23)[~~(22)~~] "Medical resident" means:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(24)[~~(23)~~] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(25)[~~(24)~~] "Non-Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient;

(b) The Medicaid Program is not the payer for the service; and

(c) The recipient is liable for payment to the provider for the service.

(26)[~~(25)~~] "Other licensed medical professional" means a health care provider:

(a) Other than a physician, physician assistant, advanced practice registered nurse, certified registered nurse anesthetist, nurse midwife, or registered nurse; and

(b) Who has been approved to practice a medical specialty by the appropriate licensure board.

(27)[~~(26)~~] "Other provider preventable condition" is defined in 42 C.F.R. 447.26(b).

(28)[~~(27)~~] "Physician assistant" is defined in KRS 311.840(3).

(29)[~~(28)~~] "Physician injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not typically self-administered;

(b) Is not excluded as a noncovered immunization or vaccine;

(c) Requires special handling, storage, shipping, dosing, or administration; and

(d) Is a rebatable drug.

(30)[~~(29)~~] "Podiatrist" is defined by KRS 205.510(12).

(31)[~~(30)~~] "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(32)[~~(31)~~] "Recipient" is defined by KRS 205.8451(9).

(33)[~~(32)~~] "Screening" means the evaluation of a recipient by a physician to determine:

(a) If a disease or medical condition is present; and

(b) If further evaluation, diagnostic testing, or treatment is needed.

(34)[~~(33)~~] "Supervising physician" is defined in KRS 311.840(4).

(35)[~~(34)~~] "Supervision" is defined in KRS 311.840(6).

(36)[~~(35)~~] "Timely filing" means receipt of a Medicaid claim by the department:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(37)[~~(36)~~] "Unlisted procedure or service" means a procedure or service:

(a) For which there is not a specific CPT code; and

(b) Which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1)(a) A participating physician shall:

1. Be licensed as a physician in the state in which the medical practice is located;

2. Comply with the:

a. Terms and conditions established in 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672;

b. Requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164;

3. Have the freedom to choose whether to provide services to a recipient; and

4. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any service to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis before the service begins; and

2.[~~Whether or not~~] The[~~:~~

~~a. Provider is a Medicaid-participating provider; or~~

~~b.~~] service is not a Medicaid-covered service.

(2) If a provider agrees to provide services to a recipient, the provider:

(a) Shall bill the department rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

(3)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(4)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(6) A provider shall comply with 45 C.F.R. Part 164.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a:

1. Medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

2. Locum tenens physician who provides direct physician contact;

3. Physician assistant in accordance with Section 7 of this administrative regulation; or

4. Locum tenens APRN who provides direct APRN contact;

(b) A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(c) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(d) A sleep disorder service; or

(e) A telehealth consultation provided in accordance with 907 KAR 3:170.

(3) A service provided by an other licensed medical professional shall be covered if the other licensed medical professional is:

(a) Employed by the supervising physician; and

(b) Licensed in the state of practice.

(4) A sleep disorder service shall be covered if performed in:

(a) A hospital;

(b) A sleep laboratory if the sleep laboratory has documentation demonstrating that it complies with criteria approved by the:

1. American Sleep Disorders Association; or

2. American Academy of Sleep Medicine; or

(c) An independent diagnostic testing facility that:

1. Is supervised by a physician trained in analyzing and interpreting sleep disorder recordings; and

2. Has documentation demonstrating that it complies with criteria approved by the:

a. American Sleep Disorders Association; or

b. American Academy of Sleep Medicine.

Section 4. Service Limitations. (1) A covered service provided to a lock-in recipient shall be limited to a service provided by the lock-in recipient's designated primary care provider or designated controlled substance prescriber unless:

(a) The service represents emergency care; or

(b) The lock-in recipient has been referred to the provider by the lock-in recipient's designated primary care provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 11:034.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in a physician's office shall not be covered as a separate reimbursable service through the physicians' program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused, or inhaled drug or biological that:

1. Is not typically self-administered;

2. Is not excluded as a noncovered immunization or vaccine; and

3. Requires special handling, storage, shipping, dosing, or administration.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, shall be covered within the scope and limitations of 42 C.F.R. 441, Subpart E and Subpart F.

(6)(a) Except as provided in paragraph (b) of this subsection, coverage for a service designated as a psychiatry service CPT code and provided by a physician shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(b) Coverage for a service designated as a psychiatry service CPT code that is provided by a board certified or board eligible psychiatrist or by an advanced practice registered nurse with a specialty in psychiatry shall not be subject to the limits established in paragraph (a) of this subsection.

(c) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(d) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(7) An anesthesia service shall be covered if:

(a) Administered by:

1. An anesthesiologist who remains in attendance throughout the procedure; or

2. An individual who:

a. Is licensed in Kentucky to practice anesthesia;

b. Is licensed in Kentucky within his or her scope of practice; and

c. Remains in attendance throughout the procedure;

(b) Medically necessary; and

(c) Not provided as part of an all-inclusive CPT code.

(8) The following shall not be covered:

(a) An acupuncture service;

(b) An autopsy;

(c) A cast or splint application in excess of the limits established in 907 KAR 3:010;

(d) Except for therapeutic bandage lenses, contact lenses;

(e) A hysterectomy performed for the purpose of sterilization;

(f) Lasik surgery;

(g) Paternity testing;

(h) A procedure performed for cosmetic purposes only;

(i) A procedure performed to promote or improve fertility;

(j) Radial keratotomy;

(k) A thermogram;

(l) An experimental service which is not in accordance with current standards of medical practice;

(m) A service which does not meet the requirements established in Section 3(1) of this administrative regulation;

(n) Medical direction of an anesthesia service; or

(o) Medical assistance for an other provider preventable condition in accordance with 907 KAR 14:005.

Section 5. Prior Authorization Requirements for Recipients Who are Not Enrolled with a Managed Care Organization. (1) The following procedures for a recipient who is not enrolled with a managed care organization shall require prior authorization by the department:

(a) Magnetic resonance imaging;

(b) Magnetic resonance angiogram;

(c) Magnetic resonance spectroscopy;

(d) Positron emission tomography;

(e) Cineradiography or videoradiography;

(f) Xeroradiography;

(g) Ultrasound subsequent to second obstetric ultrasound;

(h) Myocardial imaging;

(i) Cardiac blood pool imaging;

(j) Radiopharmaceutical procedures;

(k) Gastric restrictive surgery or gastric bypass surgery;

(l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form; or

(n) A covered unlisted procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service;

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(4) A referring physician, a physician who wishes to provide a given service, a podiatrist, a chiropractor, or an advanced practice registered nurse:

(a) May request prior authorization from the department; and

(b) If requesting prior authorization, shall request prior authorization by:

1. Mailing or faxing:

a. A written request to the department with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

b. If applicable, any required federal consent forms; or

2. Submitting a request via the department's web-based portal with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation.

Section 6. Therapy Service Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(2) Physical therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(3) Occupational therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be approved if the additional service is determined to be medically necessary by:

(a) The department, if the recipient is not enrolled with a managed care organization; or

(b) Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 7. Physician Assistant Services. (1) Except for a service limitation specified in subsections (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and

(d) The physician assistant complies with:

1. KRS 311.840 to 311.862; and

2. Section 2(1)(b) of this administrative regulation.

(2) A same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(8) of this administrative regulation;

(b) An anesthesia service;

(c) An obstetrical delivery service; or

(d) A service provided in assistance of surgery.

Section 8. Behavioral Health Services Covered Pursuant to 907 KAR 15:010. The requirements and provisions established in 907 KAR 15:010 for a service covered pursuant to 907 KAR 15:010 shall apply if the service is provided by:

(1) A physician who is the billing provider;

(2) An APRN who works for a physician who is the billing provider; or

(3) A behavioral health practitioner under supervision who works for a physician who is the billing provider.

Section 9. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physicians' services program.

Section 10.[~~9.~~] Third Party Liability. A provider shall comply with KRS 205.622.

Section 11.[~~10.~~] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 12.[~~11.~~] Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 13.[~~12.~~] Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 14.[~~13.~~] Appeal Rights. An appeal of a department decision regarding:

(1) A Medicaid recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or

(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 4, 2014

FILED WITH LRC: August 20, 2014 at noon

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding physician services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage provisions and requirements regarding physician services.

(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 the Medicaid program coverage provisions and requirements regarding physician services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Medicaid program coverage provisions and requirements regarding physician services.

(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 eliminate the option for a Medicaid-enrolled provider to provide Medicaid-covered services to a Medicaid recipient on the side (cash only basis apart from the Medicaid program) and clarify that the requirements established in DMS's independent behavioral health services administrative regulation (907 KAR 15:010) apply to such services provided by a physician, advanced practice registered nurse working for a physician, or a behavioral health practitioner under supervision working for a physician.

(b) The necessity of the amendment to this administrative regulation: The amendment regarding a non-Medicaid basis corrects an error that was overlooked in the internal review of the original administrative regulation. This non-Medicaid basis amendment is necessary to protect the health, safety, and welfare of Medicaid recipients as a provider who provides Medicaid-covered services to a Medicaid recipient apart from the Medicaid umbrella may circumvent the requirements (including safeguards to protect recipients) in providing the service. Additionally, a provider could exploit the non-Medicaid basis option if the provider wanted a payment higher than that paid by the Medicaid Program for a given service by informing the Medicaid recipient that the provider would only offer the service if the recipient paid in cash. Recipients would be vulnerable to such exploitation. For example, the "cash only" scenario has been used with suboxone and opioid dependence treatment for example. Suboxone is a drug used in tandem with opioid dependence treatment and some providers in Kentucky only offer the drug and treatment on a cash only (non-Medicaid/non-commercial insurer) basis and at a high price to individuals. An individual who is addicted to opioids is vulnerable to such exploitation. The amendment regarding the applicability of 907 KAR 15:010 (Coverage provisions and requirements regarding behavioral health services provided by independent providers) is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing the health, safety, and welfare of Medicaid recipients and by clarifying 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 enhancing the health, safety, and welfare of Medicaid recipients and by clarifying policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects physicians enrolled in the Medicaid program. Currently, there are over 14,000 individual physicians and over 1,700 physician group practices participating in the Medicaid Program. Medicaid recipients who receive services will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid providers who provided Medicaid-covered services to Medicaid recipients will have to bill the Medicaid Program for such services and not bill 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): As a result of the amendment Medicaid recipients will benefit by not being potential victims of Medicaid providers who could use the non-Medicaid basis option to exploit them.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional cost as a result of the amendment.

(b) On a continuing basis: DMS anticipates no additional cost as a result of the 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 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: 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. 42 U.S.C. 1396a(a)(10) and 42 U.S.C. 1396a(a)(19).

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."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10) mandates that a state's Medicaid Program cover physician services. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients.

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? This amendment will affect all physicians enrolled in the Medicaid program who are not reimbursed via a managed care organization.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment 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? DMS anticipates no additional cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost as a result of the amendment.

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.

STATEMENT OF EMERGENCY
907 KAR 15:070E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:075E, Reimbursement provisions and requirements regarding behavioral health services provided by residential crisis stabilization units - to comply with a federal mandate. 907 KAR 15:070E and 907 KAR 15:075E are necessary to establish Kentucky Medicaid Program coverage and reimbursement of behavioral health services (including substance use disorder services) provided by residential crisis stabilization units. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. DMS is adding residential crisis stabilization units to the behavioral health provider base to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

907 KAR 15:070E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: August 20, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a residential crisis stabilization unit that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A service shall be:

(a) Stated in the recipient's treatment plan; and

(b) Provided in accordance with the recipient's treatment plan.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a residential crisis stabilization unit shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be licensed as a residential crisis stabilization unit in accordance with 902 KAR 20:440;

(d) Comply with the requirements established in 902 KAR 20:440;

(e) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records;

(f) Be a community-based, residential program that offers an array of services including:

1. Screening;

2. Assessment;

3. Treatment planning;

4. Individual outpatient therapy;

5. Group outpatient therapy;

6. Psychiatric services;

7. Family outpatient therapy at the option of the residential crisis stabilization unit; or

8. Peer support at the option of the residential crisis stabilization unit;

(g) Provide services in order to:

1. Stabilize a crisis and divert an individual from a higher level of care;

2. Stabilize an individual and provide treatment for acute withdrawal, if applicable; and

3. Re-integrate an individual into the individual's community or other appropriate setting in a timely fashion;

(h) Not be part of a hospital;

(i) Be used when an individual:

1. Is experiencing a behavioral health crisis that cannot be safely accommodated within the individual's community; and

2. Needs overnight care that is not hospitalization;

(j) Not contain more than sixteen (16) beds;

(k) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate;

(l) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(m) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act;

(n) Have the capacity to employ staff authorized to provide treatment services in accordance with this section and to coordinate the provision of services among team members;

(o) Have the capacity to provide the full range of residential crisis stabilization services as stated in this paragraph and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;

(p) Have access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

(q) Have knowledgeable staff regarding substance use disorders.

(2) In accordance with 907 KAR 17:015, Section 3(3), a residential crisis stabilization unit which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 3. Covered Services. (1)(a) Except as specified in the requirements stated for a given service, the services covered may be provided for:

1. A mental health disorder;

2. A substance use disorder; or

3. Co-occurring mental health and substance use disorders.

(b) Residential crisis stabilization services shall be provided in a residential crisis stabilization unit.

(2) Residential crisis stabilization services shall include:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse; or

10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(c) Individual outpatient therapy or group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(d) Treatment planning provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(e) Psychiatric services provided by:

1. A psychiatrist; or

2. An APRN; or

(f) At the option of the residential crisis stabilization unit:

1. Family outpatient therapy provided by:

a. A licensed psychologist;

b. A licensed psychological practitioner;

c. A licensed clinical social worker;

d. A licensed professional clinical counselor;

e. A licensed professional art therapist;

f. A licensed marriage and family therapist;

g. A physician;

h. A psychiatrist;

i. An advanced practice registered nurse; or

j. A behavioral health practitioner under supervision except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed assistant behavior analyst; or

2. Peer support provided by a peer support specialist working under the supervision of an approved behavioral health service provider.

(3)(a) A screening shall:

1. Establish the need for a level of care evaluation to determine the most appropriate and least restrictive service to maintain the safety of the individual who may have a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment of the number and duration of risk factors including:

a. Imminent danger and availability of lethal weapons;

b. Verbalization of suicidal or homicidal risk;

c. Need of immediate medical attention;

d. Positive and negative coping strategies;

e. Lack of family or social supports;

f. Active psychiatric diagnosis; or

g. Current drug and alcohol use.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a mental health disorder, a substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance related disorder, a mental health disorder, or co-occurring related disorders;

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified crisis treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(d)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified crisis treatment plan;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance related disorder, a mental health disorder, or co-occurring related disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified crisis treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's crisis treatment plan;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(e)1. Treatment planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. Family outpatient therapy shall:

a. Be provided to promote:

(i) The health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, a mental health disorder, or co-occurring related disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(g)1. Peer support services shall:

a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer, parent, or family member:

(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and

(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Be coordinated within the context of a comprehensive, individualized treatment plan developed through a person-centered planning process;

g. Be identified in each recipient's treatment plan; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's treatment plan.

2. To provide peer support services, a residential crisis stabilization unit shall:

a. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 2:230, or 908 2:240;

b. Use an approved behavioral health services provider to supervise peer support specialists;

c. Have the capacity to coordinate the provision of services among team members; and

d. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(4)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without

documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the residential crisis stabilization unit;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(2) Residential crisis stabilization services shall not include:

(a) Room and board;

(b) Educational services;

(c) Vocational services;

(d) Job training services;

(e) Habilitation services;

(f) Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

(g) Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

(h) Recreational activities;

(i) Social activities; or

(j) Services required to be covered elsewhere in the state plan.

(3)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a residential crisis stabilization service from a community mental health center, the department shall not reimburse for the same service provided to the same recipient during the same time period by a residential crisis stabilization unit.

Section 6. Records Maintenance, Documentation, Protection, and Security. A residential crisis stabilization unit shall maintain a current health record for each recipient in accordance with 902 KAR 20:440.

Section 7. Medicaid Program Participation Compliance. (1) A residential crisis stabilization unit shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a residential crisis stabilization unit receives any duplicate payment or overpayment from the department, regardless of reason, the residential crisis stabilization unit shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the residential crisis stabilization unit accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the residential crisis stabilization unit.

(b)1. A residential crisis stabilization unit may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Residential crisis stabilization unit makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Residential crisis stabilization unit shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the residential crisis stabilization unit regarding the service.

(4)(a) A residential crisis stabilization unit attests by the residential crisis stabilization unit's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a residential crisis stabilization unit receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the residential crisis stabilization unit shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a residential crisis stabilization unit shall result in the suspension or termination of the residential crisis stabilization unit from Medicaid Program participation.

Section 8. Third Party Liability. A residential crisis stabilization unit shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A residential crisis stabilization unit that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the residential crisis stabilization unit's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the residential crisis stabilization unit's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 4, 2014

FILED WITH LRC: August 20, 2014 at noon

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units (RCSUs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:075E (Reimbursement provisions and requirements regarding behavioral health services provided by residential crisis stabilization units). To qualify as a provider, a residential crisis stabilization unit must be licensed in accordance with 902 KAR 20:440. RCSUs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services within the scope of residential crisis stabilization unit services includes a screening; an assessment; residential crisis stabilization services; individual outpatient therapy; group outpatient therapy; psychiatric services; treatment planning; peer support (optional); and family outpatient therapy (optional).

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include residential crisis stabilization units) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(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 complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any entity that obtains a license as a residential crisis stabilization unit will be affected by this administrative regulation. Additionally, the following behavioral health professionals who are authorized to provide services in a residential crisis stabilization unit will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services provided by an RCSU will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as residential crisis stabilization units and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a residential crisis stabilization unit will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in the other authorized provider setting - community mental health centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars

associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(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 is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

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."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation 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? 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 is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars.00 associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 15:075E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:070E, Coverage provisions and requirements regarding behavioral health services provided by residential crisis stabilization units - to comply with a federal mandate. 907 KAR 15:070E and 907 KAR 15:075E are necessary to establish Kentucky Medicaid Program coverage and reimbursement of behavioral health services (including substance use disorder services) provided by residential crisis stabilization units. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. DMS is adding residential crisis stabilization units to the behavioral health provider base to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation. This emergency administrative regulation shall be replaced by an ordinary administrative

regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

907 KAR 15:075E. Reimbursement provisions and requirements for behavioral health services provided by residential crisis stabilization units.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: August 20, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a residential crisis stabilization unit that meets the provider participation requirements established in 907 KAR 15:070; and

(c) In accordance with the requirements established in 907 KAR 15:070; and

(3) Covered in accordance with 907 KAR 15:070.

Section 2. Reimbursement. (1) The department shall reimburse a per diem rate of $354 for services provided by a residential crisis stabilization unit to a recipient for a day.

(2) The reimbursement referenced in subsection (1) of this section shall represent total reimbursement for all services provided by a residential crisis stabilization unit to a recipient for the day.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a residential crisis stabilization service from a community mental health center, the department shall not reimburse for the same service provided to the same recipient during the same time period by a residential crisis stabilization unit.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:070; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 4, 2014

FILED WITH LRC: August 20, 2014 at noon

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units (RCSUs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:070E (Coverage provisions and requirements regarding behavioral health services provided by residential crisis stabilization units). To qualify as a provider, a residential crisis stabilization unit must be licensed in accordance with 902 KAR 20:440. RCSUs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services within the scope of residential crisis stabilization unit services includes a screening; an assessment; residential crisis stabilization services; individual outpatient therapy; group outpatient therapy; psychiatric services; treatment planning; peer support (optional); and family outpatient therapy (optional). DMS will reimburse an all-inclusive daily rate of $354 to an RCSU per recipient receiving services from the RCSU on that day.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include residential crisis stabilization units) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(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 complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative

regulation: This is a new administrative regulation rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any entity that obtains a license as a residential crisis stabilization unit will be affected by this administrative regulation. Additionally, the following behavioral health professionals who are authorized to provide services in a residential crisis stabilization unit will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services provided by an RCSU will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as residential crisis stabilization units and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a residential crisis stabilization unit will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in the other authorized provider setting - community mental health centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(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 is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

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."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the 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 administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation 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? 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 is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, September 12, 2014)

16 KAR 9:080. University-based alternative certification program.

RELATES TO: KRS 156.111, 160.345(2)(h), ***160.380(5)(c),*** 161.027, 161.028(1)(k), (s), (t), 161.030(10), 161.048

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions. (1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, guidance counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

Section 2. Admission Requirements. (1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

(3) An applicant for any alternative certification teacher or administrator program shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 or 3 except completion of the corresponding educator preparation program and the required assessments.

Section 3. University Requirements for Alternative Certification Teacher Program. (1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, including internship programs, within a period of three (3) years for those enrolled in an alternative certification teacher program.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. Prior to the candidate's enrollment in the Kentucky Teacher Internship Program pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching. (1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be:

(a)1. Until December 31, 2014, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form TC-TP; or

2. Beginning January 1, 2015, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form CA-TP; and

(b) Valid for employment consistent with the area of certification being sought through the preparation program.

(3) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.

Section 5. Issuance of a Temporary Provisional Certificate for Teaching. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP or Form CA-TP a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c)1. Until December 31, 2014, completion of Form TC-TP; or

2. Beginning January 1, 2015, completion of Form CA-TP.

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) new semester hours or its equivalent from the approved preparation program;

(c) The required assessments as established in 16 KAR 6:010; and

(d)1. Until December 31, 2014, completion of Form TC-TP; or

2. Beginning January 1, 2015, completion of Form CA-TP.

Section 7. Alternative Certification Teacher Program Completion Requirements. (1) If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required coursework, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.

(2) When the candidate is prepared to enroll in the Kentucky Teacher Internship Program, the recommending institution shall complete and sign page five (5) of the TC-TP or page four (4) of the CA-TP form and deliver it to the employing school district for submission to the Education Professional Standards Board.

(3) Upon completion of all program requirements of the alternative certification teacher program, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1 or CA-1, which are[~~is~~] incorporated by reference in 16 KAR 2:010.

(4) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

(5) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate, in accordance with KRS 161.048(7), and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Teacher Internship Statement of Eligibility-Confirmation of Employment as a Teacher upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, in accordance with KRS 161.048(7), the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.

Section 8. University Requirements for an Alternative Certification Administrator Program. (1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate. (1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification administrator program to

provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP or Form CA-TP a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator. (1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the temporary provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c)1. Until December 31, 2014, completion of Form TC-TP; or

2. Beginning January 1, 2015, completion of Form CA-TP.

Section 12. Alternative Certification Administrator Program Completion Requirements. (1)(a) If the alternative certification administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6:030, and completed the required coursework, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.

(b) When a principal candidate is ready to enroll in the Kentucky Principal Internship Program, the recommending institution shall complete page five (5) of the TC-TP form or Form CA-TP and deliver the form to the employing school district for submission to the Education Professional Standards Board.

(2)(a) An alternative certification administrator candidate who failed to complete the assessments, the internship, or the required coursework during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(b) If the candidate was initially enrolled in the alternative certification program for principal, the candidate shall be eligible for a Principal Internship Statement of Eligibility-Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(3)(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(4) Upon completion of the alternative certification administrator program, the assessments, and the internship or Superintendents Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 or CA-1 form***, which are incorporated by reference in 16 KAR 2:010***.

(5) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Temporary Provisional Certification", Form TC-TP, May 2007;

(b) "Application for Temporary Provisional Certification", Form CA-TP, June 2014;

(c) "Teacher Internship Statement of Eligibility-Confirmation of Employment as a Teacher", November 2004; and

(d)[~~(c)~~] "Principal Internship Statement of Eligibility-Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School", May 2005.

(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.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: June 23, 2014

FILED WITH LRC: July 14, 2014 at 2 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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, September 12, 2014)

201 KAR 2:030. License Transfer.

RELATES TO: KRS 315.191(1)(c), (d), 315.210

STATUTORY AUTHORITY: KRS 218A.205(7), 315.191(1)(a), (c), (d), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 ***authorizes[~~requires~~]*** the board to establish conditions for licensure by reciprocity. KRS 218A.205(7) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity.

Section 1. Definitions. (1) "Board" is defined by KRS 315.010(3).

(2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(3) "NABP" means the National Association of Boards of Pharmacy.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if the:

(1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure ***when[~~at the time~~]*** the license in the other jurisdiction was granted;

(2) Applicant holds[~~has held~~] in good standing, an active license to practice pharmacy[~~during the entire year preceding the time of filing an application~~];

(3) Applicant has:

(a) Completed and certified the NABP Preliminary Application for Transfer of Pharmacist License form; and

(b) Received an NABP Official Application for Transfer of

Pharmacist License;

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmacist License form, including:

(1) Name, maiden, and other names used currently or previously;

(2) Address, telephone number;

(3) Date and place of birth, and current age;

(4) Social Security number;

(5) Citizenship**;**

(6) Gender;

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received; ***and***

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience prior to licensure as a pharmacist, including the State Board of Pharmacy with which the hours are filed;

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses obtained by:

(a) Score transfer; and

(b) Licensure transfer;

(13) Practice and employment, including nonpharmacist employment, from initial licensure to the date of filing the application; and

(14) Record of charges, convictions, and fines imposed, or certification that the applicant has not been convicted, fined, or disciplined, or had a license revoked.

Section 4. The board shall accept a license transfer from a jurisdiction that:

(1) Is an active member of the NABP; and

(2) Grants license transfer to a pharmacist pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. Fee. An applicant shall include the fee specified by 201 KAR 2:050, Section 1(2), (20).

Section 7. (1) "NABP Preliminary Application for Transfer of Pharmacist License", 3/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY HANNA, President

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, September 12, 2014)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an ***internship[~~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. An applicant for registration as a pharmacist intern shall:

(1) File an Application for Registration as a Pharmacist Intern, Form I, with the board;

(2) Attach a recent head and shoulders passport photograph, that is not a proof copy or plastic identification; and

(3) Submit proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. An applicant for examination for licensure as a pharmacist shall:

(1) Complete 1,500 hours of internship;

(2) Be awarded credit for internship for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

(3) Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

(4) Be limited to internship credit:

(a) Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board; and

(b) Of twenty (20) hours per week during academic sessions in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours;

(5) Be given credit for the following forms of internship:

(a)[~~,~~] Completion of an academic experience program;

(b)[~~,~~] Work performed in a pharmacy under the supervision of a preceptor;

(c)[~~,~~] Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours and the pharmacist intern shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which

shall be approved by the board president; or

(d) An internship performed outside of Kentucky if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

(6) Not be awarded credit for an internship completed prior to registration with the board.

Section 4. A pharmacist intern shall: (1) Be issued a Registration Identification Card;

(2) Carry the Registration Identification Card when on duty;[~~and~~]

(3) Show it upon request to a member of the board or its authorized agent; and

(4) Notify the board within thirty (30) days of any charge of:

(a) A felony;

(b) A violation of drug laws; or

(c) A violation of alcohol laws.

Section 5. The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

(1) Currently enrolled in a college or school of pharmacy approved by the board;

(2) A current applicant for licensure as a pharmacist in Kentucky; or

(3) Awaiting the results of an examination.

Section 6. The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

(1) The intern is on a semester break; or

(2) Personal or family health concerns or other reasons beyond the control of the pharmacist intern necessitate a temporary absence from enrollment and the absence is approved by the board.

Section 7. A person who is not registered as a pharmacist intern shall not:

(1) Hold himself ***or herself*** out as a pharmacist intern; or

(2) Perform the duties of a pharmacist intern.

Section 8. (1) A preceptor shall be a pharmacist who:

(a) Has a[~~Whose~~] license[~~is~~] in good standing;

(b) Has been licensed by the board for at least one (1) year; and

(c) Has requested in writing to be designated as a preceptor.

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his ***or her*** internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 9. Credit for Non-Academic Experience Programs. (1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a Pharmacist Preceptor's Affidavit, Form II.

(2) On or before graduation from a college or school of pharmacy, a pharmacist intern shall submit an Internship Report, Form III.

Section 10. Credit for Academic Experience Programs. (1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration as a Pharmacist Intern", Form I, 11/2012;

(b) "Pharmacist Preceptor's Affidavit", Form II, 11/2012

(c) "Internship Report", Form III, 11/2012; and

(d) "Academic Experience Affidavit", Form IV, 11/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY HANNA, President

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

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.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended at ARRS, September 12, 2014)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 ***requires***[~~***authorizes***~~] the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16), fifty (50) minute hours of actual classroom attendance.

(2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:

(a) The offer or counteroffer is accepted; and

(b) An executory contract exists.

(3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:

(a) Is contrary to fact;

(b) Leads a person to a mistaken belief or conclusion; or

(c) Knowingly made a representation that is contrary to fact.

(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:

(a) Is:

1. Known to be false; or

2. Made recklessly;

(b) Is made to induce an act;

(c) Induces an act in reliance on the misrepresentation; and

(d) Causes injury.

(5)[~~"Guaranteed sales plan" means an offer or solicitation:~~

~~(a) To guarantee the sale of an owner's real estate; or~~

~~(b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.~~

~~(6) "Prize" means an item of value that is:~~

~~(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and~~

~~(b) Not a complimentary:~~

~~1. Refreshment, including a soft drink or snack, that is offered~~

~~to the general public; or~~

~~2. Gift that:~~

~~a. Has a value less than $100;~~

~~b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and~~

~~c. Was not offered prior to closing.~~

~~(7) "Required disclosure" means:~~

~~(a) In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;~~

~~(b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and~~

~~(c) In television advertising, that the disclosure shall:~~

~~1. Be verbal and clearly understandable; or~~

~~2. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering, and in letters:~~

~~a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or~~

~~b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.~~

~~(8)~~] "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

JIM HUFF, Chairperson

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

CONTACT PERSON: Ronnie J. Harris, Jr. General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone 502-429-7250, fax 502-429-7246.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended at ARRS, September 12, 2014)

201 KAR 11:105. Advertising listed property; advertising public information about specific property*; under what conditions[~~- when~~]* consent and authorization of owner or principal broker is required.

RELATES TO: KRS 324.117, 324.160(4)(w), (6)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 ***requires[~~authorizes~~]*** the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes certain standards for advertising real estate.

Section 1. A real estate broker shall not offer real estate for sale or lease without the consent of the owner.

(1) If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner.

(2)(a) After a closing has occurred, a buyer's agent may advertise his or her role in the sale.

(b) The advertisement shall conspicuously state that his or her participation was as the buyer's agent[~~A buyer's agent may advertise or promote his or her participation in the sale after a binding contract is created~~].

Section 2. A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.

Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.

(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.

(3) The requirements in this section shall apply to advertisements for listed property only.

Section 4. (1) An advertisement by a licensee shall be approved by***:***

(a) The principal broker with whom the licensee is affiliated***; or***

(b)[~~or by~~] An individual designated by the principal broker to approve the advertisement.

(2) A principal broker shall require his or her licensee to:

(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;

(b) Provide the owner-client with written notice of these advertising requirements; and

(c) Obtain the owner-client's written agreement to comply with the advertising requirements.

Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.

Section 6. A licensee may advertise the listings of another real estate brokerage company if:

(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listing or listings; and

(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.

JIM HUFF, Chairperson

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

CONTACT PERSON: Ronnie J. Harris, Jr. General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone 502-429-7250, fax 502-429-7246.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended at ARRS, September 12, 2014)

201 KAR 11:121. Improper conduct.

RELATES TO: KRS 324.010(3), 324.160, 24 C.F.R. 3500

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 ***requires[~~authorizes~~]*** the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct.

Section 1. ***Definition.[~~Definitions. (1)~~]*** "Guaranteed sales plan" means an offer or solicitation ***to guarantee the:***

(1)[~~:(a) To guarantee the~~] Sale of an owner's real estate; or

(2)[~~(b) To guarantee the~~] Purchase of the owner's real estate if the owner's real estate is not sold by the broker.

[~~(2) "Required disclosure" means:~~

~~(a) In print advertising, the required disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;~~

~~(b) In radio advertising, the required disclosure shall be verbal and clearly understandable; and~~

~~(c) In television advertising, the required disclosure shall be:~~

~~1. Verbal and clearly understandable; or~~

~~2. Written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for~~

each additional line of lettering, and in letters which are:

a. Eighteen (18) video scan lines in size for letters which are all upper case; or

b. Twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.]

Section 2. ***(1) It shall constitute improper conduct for a licensed agent to:***

(a)[The following shall be improper for any licensed agent:

(1) To] Accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services***;***

(b)[. (2) It shall not be improper conduct to advertise the fee or other compensation the licensed agent agrees to charge for his services.

(3) To] Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. This provision shall not be construed to permit otherwise unlawful discrimination***;***

(c)[. (4) To] Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1.[(a)] Loyalty;

2.[(b)] Obedience to lawful instructions;

3.[(c)] Disclosure;

4.[(d)] Confidentiality;

5.[(e)] Reasonable care and diligence; and

6.[(f)] Accounting***;***

(d)[. (5)(a) To] Advertise a guaranteed sales plan without***[the required disclosure, as described in Section 1 of this administrative regulation, of]***:

1. ***Disclosing whether:***

a.[Whether] A fee is charged for participation;

b.[2. Whether] The real estate shall meet qualifications for participation;

c.[3. Whether] The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and

d.[4. Whether] The owner of the real estate shall purchase other real estate listed for sale by the licensee or his ***or her designee; and***

2. Including, in:

a. Print advertising, letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;

b. Radio advertising, communication that shall be clearly understandable; or

c. Television advertising:

(i) Verbal communication that shall be clearly understandable;

(ii) Written communication that shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used; or

(iii) Any combination of verbal and written communication that shall comply with the requirements of this clause; or

(e)[designee][as defined in 201 KAR 11:011]***[. (6) To]*** Violate a ***provision of KRS Chapter 324 or 201 KAR Chapter 11[statute or administrative regulation]*** governing brokers, sales associates, or real estate transactions.

(2) It shall not be considered improper conduct for a licensed agent to advertise the fee or other compensation the licensed agent agrees to charge for his or her services.[(7) To serve in the dual capacity of a real estate licensee and loan originator, if the real estate licensee, while acting in that capacity:

(a) Fails to disclose this dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities;

(b) Fails to contact the Department of Financial Institutions to register and pay the one (1) time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing;

(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below:

1. Taking information from the borrower and filling out the application;

2. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;

3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;

4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;

5. Initiating or ordering a verification of employment and verifications of deposit;

6. Initiating or ordering a request for mortgage and other loan verifications;

7. Initiating or ordering appraisals;

8. Initiating or ordering an inspection or engineering report;

9. Providing disclosures (truth in lending, good faith estimate, others) to the borrower;

10. Assisting the borrower in understanding and clearing credit problems;

11. Maintaining regular contact with the borrower, realtors, and lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;

12. Ordering legal documents;

13. Determining whether the property was located in a flood zone or ordering that service; and

14. Participating in the loan closing;

(d) Requests or receives compensation that is not commensurate with the actual work performed; or

(e) Requests or receives compensation for work that is not actually performed by him or her.][(8) A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license.]

JIM HUFF, Chairperson

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

CONTACT PERSON: Ronnie J. Harris, Jr. General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone 502-429-7250, fax 502-429-7246.

DEPARTMENT OF AGRICULTURE
Department of Agriculture
Office of State Veterinarian, Division of Animal Health
(As Amended at ARRS, September 12, 2014)

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

RELATES TO: KRS ***150.720-150.740[~~150.720(2), 150.740, Chapter 246~~]***, 246.295(2),***[~~Chapter 251,~~]*** 257.550, 257.990, 9 C.F.R. Part 55

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.030, 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1) and 246.295(1) require the Department of Agriculture in cooperation with the Department of Fish and Wildlife Resources[~~KDFWR~~] to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky ***and[~~,~~]***develop a herd monitoring system, and establishes[~~to establish~~] requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions. (1) "Adjacent herd" means a***:***

(a) Herd of cervids occupying premises that border a positive herd, including herds separated by roads or streams; or

(b)[~~a~~] Herd of cervids occupying premises that were previously occupied by a positive herd within the past five (5) years.

(2) "Animal" means any farmed cervid.

(3) "Animal identification" means a device or means of animal identification approved for use under this administrative regulation by the State veterinarian.

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

(6) "Certified" means the status achieved by a herd that has met the standards of the CWD HCP continuously for at least five (5) years.

(7) "Certified CWD***[~~cervid~~]*** herd" means a herd of cervids that has achieved "Certified" status in the Kentucky HCP, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the Kentucky State veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid CWD Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs:

(a) The CWD Herd Certification Program (HCP)***;*** and

(b) The CWD Herd Monitoring Program (HMP).

(10) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(11) "CWD exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous five (5) years.

(12) "CWD exposed herd" means a herd in which a CWD positive animal has resided within five (5) years prior to that animal's diagnosis as CWD positive, as determined by an APHIS or state representative.

(13) "CWD Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(14) "CWD Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(15) "CWD positive animal" means an animal that has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(16) "CWD positive herd" means a herd in which a CWD positive animal resided when it was diagnosed and which has not been released from quarantine.

(17) "CWD source herd" means a herd that is identified through testing, tracebacks, or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.

(18) "CWD suspect animal" means an animal for which an APHIS or state representative has determined that unofficial CWD tests results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which official laboratory results are inconclusive or not yet conducted.

(19) "CWD suspect herd" means a herd for which unofficial CWD test results, laboratory evidence or clinical signs suggest a diagnosis of CWD as determined by an APHIS employee or state representative, but for which official laboratory results have been inconclusive or not yet conducted.

(20) "Farmed cervid" means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method. Farmed cervid shall exclude any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a CWD certified or monitored program.

(21) "Harvest" means to take or kill farmed cervids for meat and other products.

(22) "Herd" means a group of cervids that are:

(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single premises (lot, farm, or ranch); or

(b) Under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

(23) "Herd plan" means a written herd agreement or premises management agreement:

(a) Developed by APHIS in collaboration with the herd owner, state representatives, and other affected parties; and

(b) Which sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(24) "KDFWR" means the Kentucky ***Department of Fish and Wildlife Resources[~~KDFWR~~]***.

(25) "Licensed and accredited veterinarian" means a veterinarian:

(a) Approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and the State veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal animal disease control and eradication programs; and

(b) Who is licensed to practice in the Commonwealth of Kentucky under KRS Chapter 321.

(26) "Official animal identification" means a device or means of animal identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual animals.

(27) "Official CWD test" means any test for the diagnosis of CWD approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(28) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids or parts thereof to any location without specific written approval of the State veterinarian.

(29) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.

Section 2. CCWDSI Surveillance Programs. All farmed cervid herds shall be enrolled in one (1) of the state CCWDSI programs, either the CWD Herd Certification Program (HCP) or the CWD Herd Monitoring Program (HMP) maintained by the Office of the State Veterinarian. The HCP and the HMP require annual renewal.

Section 3. HCP Requirements. Herds enrolled in this program

shall meet the requirements provided in Sections 3 through 5 of this administrative regulation and the requirements in 9 C.F.R. Part 55, Subpart B. (1) Animal identification requirement.

(a) All animals twelve (12) months of age and older shall have at least two (2) forms of animal identification, one (1) of which shall be an official animal identification and one (1) form that is a visual (flop tag) type of identification, which shall be unique to that animal within the herd.

(b) All animals of any age shall have official animal identification before being moved from the premises for any purpose.

(2) The herd premises shall have a valid KDFWR permit and perimeter fencing that is approved by KDFWR pursuant to KRS 150.730 through 150.735.

(3) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(4) The owner shall report to the Office of State veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest or slaughter) of animals in the herd aged twelve (12) months or older.

(a) The reporting time frame shall be:

1. For animals that escape or disappear, a report shall be made within forty-eight (48) hours;

2. For animals taken by harvest or slaughter, a report shall be submitted by the last day of each calendar month; and

3. For animals that die from illness or unknown reason, a report shall be submitted within seven (7) days.

(b) The report shall include all animal identification numbers and the estimated time and date of the death, disappearance, escape, slaughter, or killing of the animal.

(c) Animals that die or are killed by harvest or slaughter shall have the required tissue specimens collected for CWD testing except as exempted by 9 C.F.R. ***55.23[~~Part 55.24~~]***.

(d) In accordance with 9 C.F.R. 55.23, an APHIS or state representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(5) The owner shall maintain and provide to the State Veterinarian or APHIS representative upon request the following herd records:

(a) Complete inventory of animals including the official identification number and any other identification, and the age and sex of each animal;

(b) A record for each purchased or natural addition to the herd including:

1. The official identification number, species, age, and sex of the cervid;

2. The name and address of the person from whom the cervid was purchased;

3. The address of the herd from which the cervid was purchased;

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

5. Date the purchased addition entered the herd; and

6. Approximate date of birth if a natural addition;

(c) A record of each cervid leaving the herd including:

1. If the cervid was shipped live other than to slaughter, the date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment;

2. If the cervid died on the premises, the date of death, the apparent cause of death, the cervid's age, sex, and state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

3. If the cervid was shipped to slaughter, the date of movement, the cervid's age, sex, and state-federal official individual animal identification, and the name and address of the slaughter establishment;

4. If the cervid was killed by harvest, the date, the name and address of the hunter, and the disposition of the carcass; or

5. If the cervid escaped, the date of escape;

(d) A record of all individual animal tests conducted on cervids in the herd;

(e) Records received from the herd veterinarian related to veterinary services provided to the herd; and

(f) All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(6) Animal inventory.

(a) To enroll a herd in the HCP, the owner shall conduct a physical inventory of all animals to establish the baseline herd inventory. The physical inventory shall be conducted ***with[~~by~~]*** a representative of the office of the State Veterinarian and shall verify all animal identification and records.

(b) An annual herd inventory shall be conducted that reviews all records and includes observation of all[~~unrestrained~~] animals in an enclosed area including physical restraint ***if[~~as~~]*** necessary to reconcile all visible identification devices with available records.

(c) The state veterinarian or APHIS representative may request additional physical inventories to verify herd compliance with program standards.

(d) The owner shall be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(7) Maintenance of separate herds by the same owner shall comply with 9 C.F.R.***[~~Part~~]*** 55.23.

(8) The herd enrollment date is the date which is the latter of:

(a) The physical inventory being completed in accordance with subsection (6)(a) of this section; and

(b) The application being approved by the state veterinarian.

(9) Surveillance procedures for the HCP. (a) HCP Certified Herds. Cervids twelve (12) months and older that die for any reason except slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

(b) Non-certified HCP Herds. Cervids twelve (12) months of age or older that die for any reason including slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

(c) All animals in an enrolled herd shall have official identification before reaching the age of twelve (12) months.

Section 4. HCP Permit. (1) A HCP permit shall be required to participate in the program. A HCP permit is valid for one (1) calendar year from the date of enrollment. The applicant shall submit the following:

(a) A permit application contained in the CCWDSI Herd Certification Program and Herd Monitoring Program application packet;

(b) A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

(c) A fee of $150.

(2) The department shall grant or deny a permit within thirty (30) days after the department receives the completed application package with the required fee.

(3) After the permit is issued, the participant shall enroll his herd into the HCP as follows:

(a) Conduct the physical inventory required by Section 3(6) of this administrative regulation; and

(b) Provide any records of the animals to the state veterinarian.

(4) Herd status levels. (a) When a herd is first enrolled in the HCP, it shall be placed in first-year status, except that if the herd is comprised solely of animals obtained from herds already enrolled in the HCP, the newly enrolled herd shall have the same status as the lowest status of any herd that provided animals for the herd.

(b) If a herd continues to meet the requirements of the HCP, the herd status shall be upgraded by one (1) year on the program enrollment date.

(c) One (1) year from the date a herd is placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it is enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R.***[~~Part~~]*** 55.24.

(d) Herds currently enrolled in the CCDWSI program shall be aligned to the appropriate status level provided in 9 C.F.R.*[Part]* 55.24.

(e) A herd owner shall be issued a certificate of "Certified" status upon complying with the HCP Program, as defined in this administrative regulation.

(f) Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

(g) A herd's certification status shall be immediately revoked and a herd investigation shall be initiated, if CWD positive or exposed animals are found in the herd.

(5) New animals shall only be introduced into the herd from other herds enrolled in the Kentucky HCP or a state Chronic Wasting Disease Certification Program approved by the Kentucky State Veterinarian or the Federal CWD Certification Program.

(a) If animals are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(b) If animals are introduced from a herd not participating in a certification program, the receiving herd shall revert to first-year status in the certification program.

Section 5. Annual HCP permit renewal required. (1) To continue in the Program, persons shall:

(a) Submit a permit renewal application thirty (30) days prior to the expiration of the prior year's permit;

(b) Pay a $150 renewal fee; and

(c) Make all animals and records available to the state veterinarian.

(2) Facilities and herds that have met the requirements in Sections 3 through 5 of this administrative regulation shall receive a renewal permit.

Section 6. CWD Herd Monitoring Program (HMP) Requirements. Herds enrolled in the HMP surveillance program shall meet the requirements in Sections 6 through 8 of this administrative regulation. HMP herds shall not be eligible for "certified" status. (1) All cervids entering a HMP facility shall originate from a CWD Certified Herd.

(2) A cervid shall not be permitted to leave the HMP facility alive.

(3) Animal identification requirement.

(a) All animals greater than twelve (12) months of age shall be identified with an official animal identification and a visual (flop tag) type of animal identification.

(b) Permit holders failing to meet identification requirements shall be subject to compliance plans and penalties as provided in Section 14 of this administrative regulation.

(4) The herd premises shall have a valid KDFWR permit pursuant to KRS 150.730 through 150.735.

(5) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(6) The owner shall report to the office of state veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest) of animals in the herd aged twelve (12) months or older.

(a) The reporting time frame shall be:

1. For animals that escape or disappear, a report shall be made within forty-eight (48) hours;

2. For animals taken by harvest, a report shall be submitted by the last day of each calendar month; and

3. For animals that die from illness or unknown reason, a report shall be submitted within seven (7) days.

(b) The report shall include all animal identification numbers and the estimated time and date of the disappearance, escape, or killing of the animal.

(c) Animals twelve (12) months of age or older that die or are killed by harvest shall have the required tissue specimens collected for CWD testing and submitted to an approved laboratory.

(d) In accordance with 9 C.F.R. 55.23, an APHIS or representative of the state veterinarian shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(7) The owner shall maintain and provide to the state veterinarian or APHIS representative upon request the following herd records:

(a) Census of animals including the official identification number and any other identification, and the age and sex of each animal;

(b) A record for each purchased or natural addition to the herd including:

1. The official identification number, species, age, and sex of the cervid;

2. The name and address of the person from whom the cervid was purchased;

3. The address of the herd from which the cervid was purchased;

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

5. Date the purchased addition entered the herd; and

6. Approximate date of birth if a natural addition;

(c) A record of each cervid leaving the herd including:

1. If the cervid died on the premises, the date of death, the apparent cause of death, the cervid's age, sex, and state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient; and

2. If the cervid was killed by harvest, the date, name, and address of the hunter, the disposition of the carcass, and CWD testing information;

(d) A record of all CWD individual animal tests conducted on cervids in the herd;

(e) Records received from the herd veterinarian related to veterinary services provided to the herd;

(f) If the animal escaped, the date of escape; and

(g) All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(8) All removals and deaths shall be reported monthly to the state veterinarian.

(9) All untagged animals that die or are killed shall be identified with an official identification device and shall be tested for CWD and shall be reported to the state veterinarian.

(10) Animal inventory.

(a) To enroll a herd in the HMP, the owner shall conduct a physical inventory of all animals to establish the baseline herd inventory. The physical inventory shall be conducted with a representative of the State Veterinarian and shall verify all animal identification and records.

(b) An annual herd census shall be conducted by the owner and a representative of the office of the state veterinarian that reviews all records and includes observation of unrestrained animals in an enclosed area.

(c) The state veterinarian or APHIS representative may request additional physical inventories to verify herd compliance with program standards.

(11) Cervids twelve (12) months and older in the following categories that die shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative:

1. All cervids that are not officially identified;

2. All cervids that die for any reason other than harvest; and

3. The first ten (10) cervids that are harvested within a calendar year.

(12) The owner shall be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

Section 7. HMP Permit. (1) A HMP permit shall be required to participate in the program. The applicant shall submit the following:

(a) A permit application contained in the CCWDSI Herd Certification Program and Herd Monitoring Program application

packet;

(b) A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

(c) A fee of $150.

(2) The department shall grant or deny a permit within thirty (30) days after the department receives the completed application package with the required fee.

(3) After the permit is issued, the participant shall enroll his herd into the HMP as follows:

(a) Conduct the physical inventory required by Section 6(10) of this administrative regulation;

(b) Provide origin documentation on all animals in herd; and

(c) Provide identification numbers, sex, age, and species for all animals in herd.

Section 8. Annual HMP permit renewal required. (1) To continue in the HMP Program, persons shall:

(a) Submit a permit renewal application thirty (30) days prior to the expiration of the prior year's permit;

(b) Pay a $150 renewal fee; and

(c) Make all animals and records available to the State Veterinarian.

(2) Facilities that have met the requirements in Sections 6 through 8 of this administrative regulation shall receive a renewal permit.

Section 9. Intrastate Movement Requirements. (1) All intrastate movements of cervids, other than to a state- federal-inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed and accredited veterinarian in accordance with 302 KAR 20:065.

(2) The intrastate movement certificate shall include the following:

(a) Consignor's name, address, and state veterinarian issued farmed cervid permit number;

(b) Consignee's name, address, and state veterinarian issued farmed cervid permit number;

(c) Official individual animal identification for each animal; and

(d) The movement permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement.

Section 10. Requirements for Entry into Kentucky. (1) Only cervids from "Certified CWD Herds" shall enter Kentucky.

(2) All cervids on the CVI shall meet the requirements in 302 KAR 20:040, Section 13.

(3) The following statements shall be included on the CVI:

(a) "All cervids identified on this certificate originate from a Certified herd meeting requirements for certified CWD herd status as determined by the Kentucky State veterinarian."; and

(b) "No cases of CWD in cervids have been diagnosed within a twenty-five (25) mile radius of the consignor premises in the last five (5) years."[~~.~~]

Section 11. Surveillance Testing Procedures. (1) Official CWD tests and approved labs to conduct official CWD testing shall be in accordance with 9 C.F.R. ***55.8[~~Part 55~~]***.

(2) A diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(3) If required tissues from test eligible cervids are not submitted for laboratory diagnosis, the state veterinarian shall reevaluate the status of the herd.

Section 12. Investigation of Cervid CWD-positive Animals. (1) An epidemiological investigation in accordance with 9 C.F.R. ***55.23[~~Part 55~~]*** shall be conducted for all animals diagnosed at an approved laboratory as CWD positive or suspect.

(2) All positive herds and all source, exposed, and adjacent herds shall be investigated epidemiologically.

(3) All positive herds and premises and all source, exposed, and adjacent herds and premises shall be quarantined.

Section 13. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed as follows:

(1) A premises may be removed from quarantine after completion of the herd plan and five (5) years of compliance with all provisions of ***[~~the~~]***9 C.F.R. Part 55.

(2) An adjacent or exposed herd ***or[~~/~~]*** premises may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.

Section 14. Penalties. (1) Penalties for failure to comply with standards established in this administrative regulation for the CCWDSI HCP or HMP.

(a) The department may, pursuant to KRS Chapter 257, revoke or suspend a herd's permit for the HCP or the HMP if:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment;

2. A person fails to comply with requirements in this administrative regulation on animal identification, animal inventory, herd records, CWD testing, or animal movement; or

3. A person or facility fails to remain in compliance with KDFWR statutes and administrative regulations.

(b) In accordance with KRS 257.990, a permit holder may be subject to a fine for violation of this administrative regulation.

(c) Any person who violates Section 5(1)(b) or Section 8(1)(b) of this administrative regulation by making an untimely payment of a renewal fee, shall be charged a penalty of ten (10) percent and shall be required to pay this penalty in addition to the original renewal fee.

1. The original renewal fee and penalties shall be compounded by ten (10) percent monthly until paid in full; and

2. Any renewal fee and penalties remaining unpaid for three (3) successive months may result in a permit revocation.

(2) Penalties for failure to comply with Section 10 of this administrative regulation, Requirements for Entry into Kentucky.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction for violating Section 10 of this administrative regulation.

(b) Upon conviction of a second violation of Section 10 of this administrative regulation and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the KDFWR may seize captive cervids that have been imported into the Commonwealth contrary to this administrative regulation and KRS 150.740 and 257.550.

(4) In accordance with KRS 150.740(8), the KDFWR may seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary this administrative regulation and KRS 150.740 and 257.550.

Section 15. Incorporation by Reference. (1) "CCWDSI Herd Certification Program and Herd Monitoring Program application packet," 10/2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: June 30, 2014

FILED WITH LRC: June 30, 2014 at 4 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, September 12, 2014)

503 KAR 1:060. Definitions for 503 KAR Chapter 1.

RELATES TO: KRS 15.330, 15.450(1)
STATUTORY AUTHORITY: KRS 15.330(1)***(h)***[~~(g), 15A.160~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS ***15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to implement KRS 15.310 through 15.404***[~~15A.560 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations~~]. This administrative regulation defines terms used in 503 KAR Chapter 1.

Section 1. Definitions. (1) "Applicant" means an individual seeking certification pursuant to KRS 15.380 to ***15.404***[~~15.402~~] from the council as a peace officer through a law enforcement agency.

(2) "Approval" means the act of the council in deciding that the requirements for a law enforcement officer, school, or instructor, pursuant to KRS 15.310 to ***15.515***[~~15.510~~] and 15.990 to 15.992, have been met.

(3) "Certification" means:

(a) Approval by the council; and

(b) Issuance of a certificate from the council as evidence of its approval.

(4) "DOCJT" means the Department of Criminal Justice Training.

(5) "Fund" means the Law Enforcement ***Foundation*** Program Fund of the Kentucky Justice and Public Safety Cabinet as established in KRS ***15.430***[~~15.340~~].

(6) "Fund administrator" means the person responsible for administering the Law Enforcement Foundation Program Fund.

(7) "In-service" means a training course that is available to a certified officer who has previously completed a KLEC approved basic training academy.

(8) "POPS" means the Executive Director[~~Staff Advisor~~] of the Office of Peace Officer Professional Standards, an administrative branch of the council, located at the[~~415~~] Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102.

(9)[~~(8)~~] "Recognized school" means a school that has not been certified by the council (***for example***[~~e.g.~~], an out-of-state school), but ***is*** considered to provide training equal to or greater than similar training offered by the department.

(10)[~~(9)~~] "Recruit" means a person attending the basic training course conducted by the basic training section of the Department of Criminal Justice Training.

(11)[~~(10)~~] "Significant life change" means divorce, change in employment, death of a family member, change of residence, bankruptcy or other economic hardship, or other modification which has substantial impact on an individual.

(12) "Submit" means mail, transmit by facsimile, or transmit via electronic means and is completed upon receipt ***by***[~~of~~] the person to whom it was directed.

(13)[~~(11)~~] "Trainee" means a person attending a training course (other than the law enforcement basic training course) conducted by a training section of the Department of Criminal Justice Training.

KEITH CAIN, Chair
APPROVED BY AGENCY: July 14, 2014
FILED WITH LRC: July 15, 2014 at 11 a.m.
CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, September 12, 2014)

503 KAR 1:120. Professional development in-service training: graduation requirements; recognized courses; records.

.

RELATES TO: KRS 15.330(1)(f), 15.404(2), 15.440(1)(e)
STATUTORY AUTHORITY: KRS 15.330(1)(h)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.440(1)(e) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the council. ***KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to implement KRS 15.310 through 15.404.*** KRS 15.404(2) requires all peace officers with active certification status to successfully complete forty (40) hours of annual in-service training certified or recognized by the council. This administrative regulation establishes requirements for graduation from an in-service training course, maintenance of in-service training records, procedures for recognizing training at noncertified schools, and procedures for receiving in-service training credit for completion of college courses.

Section 1. In-service Training Graduation Requirements. (1) A trainee in an in-service training course:

(a) Shall participate in the minimum hours prescribed for the course; and

(b) May have excused absences from the course with approval of the director of the certified school or his or her designee.

(2) An excused absence which causes a trainee to miss any of the required hours of in-service training shall be made up through an additional training assignment. A trainee shall not be allowed excused absences from more than ten (10)[~~twenty (20)~~] percent of the hours of an in-service course.

(3) To successfully complete an in-service training course, a trainee shall:

(a) Participate in at least the minimum hours prescribed for the training course;

(b) Successfully complete a graded exercise, or pass the final examination or a reexamination;

(c) Successfully complete all graded training areas and all other assignments, exercises, and projects included in the course; and

(d) Comply with all rules and administrative regulations of the certified school, the fund, and the council.

(4) Final examinations.

(a) In a course that requires a final examination as a part of the curriculum, if a trainee fails to attain a minimum score of seventy (70) on a final examination in an in-service course, the trainee may request a second examination.

(b) The request for the second examination shall be made within seven (7) calendar days from the date a notice of failure was mailed to the trainee.

(c) The second examination shall:

1. Contain a completely different set of questions from the first examination;

2. Be administered within twenty-one (21) days from the date of the request; and

3. Be administered at a time and location designated by the supervisor of the in-service program.

(d) A failure of a trainee to meet the minimum reexamination requirements shall constitute a course failure.

Section 2. In-service Training Courses at Recognized Schools. (1) The council may recognize schools providing in-service training which are not certified by the council.

(2) A trainee who desires to attend an in-service training course at a school that is not certified shall make a[~~written~~] request to the council at least thirty (30) days prior to the first day of the

course.

(3) The council ***may[shall have the authority to]*** grant a request made after the course has been attended, but failure to submit the request at least thirty (30) days in advance of the course shall be justification for not recognizing the course.

(4) The council shall review the request and determine whether the school and the course shall be recognized based upon the following:

(a) The quality and reputation of the training school or institution;

(b) The relationship of the course to the officer's rank and responsibility; and

(c) The unavailability of the course at a certified school.

(5) If, upon review of the request, the council determines that the trainee may attend an in-service training course at a school or institution that is not certified, the council shall notify the trainee's agency[,] and the fund administrator of its action.

(6) A trainee who fails to meet requirements established by the council for attendance at the recognized course (which shall not be less than those prescribed herein for certified schools) shall not have met the requirements of KRS 15.440(1)(e).

Section 3. In-Service Training Credit for Completion of College Courses. To enhance the professional development of law enforcement officers in the Commonwealth, the council recognizes the benefit that college courses offer in verbal and written skills, and advancement of general knowledge. Therefore, the council shall recognize a completed college course as in-service training if the conditions established in this section are met.[under the following conditions:] (1) The course shall be completed at an accredited[a regionally accredited] college or university.[;]

(2) The course shall be a minimum of three (3) semester credit hours.[;]

(3) The officer shall successfully complete the course and receive a passing grade that is the equivalent of a seventy (70) percent or a letter grade of "C", or higher.[;]

(4) The officer shall be an active fund participant or in active peace officer professional standards certification status as defined in KRS 15.386(2) while enrolled in the college course.[;]

(5) The cost of the college course shall be the responsibility of the officer or his or her agency, and shall not be paid through the fund.[;]

(6) An officer shall receive approval from his or her agency head prior to submitting an application to receive in-service training credit pursuant to this section. The agency head shall confirm his or her approval by signing[the "KLEC] Form 68-2, ["]Application for In-service Training Credit for College Courses.["];]

(7) An officer shall be eligible to receive in-service training credit pursuant to this section once every three (3) years.[;]

(8) An officer who meets all requirements as established in this section shall receive forty (40) hours of in-service training designated with a "pass" score for the year in which the college course was completed.[;]

(9) The receipt of in-service credit pursuant to this section shall not relieve an officer of mandatory training requirements pursuant to federal, state, or local law.[; and]

(10) The completed["KLEC] Form 68-2, ["]Application for In-service Training Credit for College Courses["] shall be sent to the KLEC Executive Director, who shall forward a copy to the fund administrator and the DOCJT Records Section Supervisor.

Section 4. Maintenance of Records. (1) Each trainee who has successfully completed an in-service course conducted by a school recognized or certified by the council (other than the Department of Criminal Justice Training) shall, at the conclusion of the course, have the school complete[DOCJT] Form 68-1, ["]Application for Training Credit["].

(2) The forms shall be sent to the council for verification and retention. After verification by the council, one (1) copy of the form shall be sent to the:

(a) Fund administrator; and

(b) Trainee's agency.

(3) All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator.

(4) All training records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes.

(5) All records shall be maintained in accordance with the ***state records retention and disposal schedules, incorporated by reference in 725 KAR Chapter 1["State Records Retention and Disposal Schedules", KRS 171.640]***.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)["DOCJT] Form 68-1, "Application for Training Credit", June 2014***[edition]***[(8/22/02 Edition)]; and

(b)["KLEC] Form 68-2, "Application for In-service Training Credit for College Courses", June 2014***[edition]***[(12/02 Edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 11 a.m.

CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:010. Applications, permits and renewals.

RELATES TO: KRS ***165A.330,*** 165A.350(3), 165A.360(1), (2), (9), ***367.110-367.360***

STATUTORY AUTHORITY: KRS ***165A.340(6), 165A.350(3), 165A.360(2)[165A.340(3), (6), (10)]***, 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A. KRS 165A.350(3) and 165A.360(2) require the commission to establish forms. This administrative regulation establishes the application requirements and incorporates forms by reference[KRS 165A.340(3), (6), and (10) and 165A.400 authorize the commission to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A. This administrative regulation establishes the required application requirements and incorporates by reference the required forms]***.

Section 1. Initial Licensure Application and Student Protection Fund Contribution for Schools. (1) A school residing in and doing business in Kentucky shall submit:

(a) Form PE-15, Application for Resident School; and

(b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

(2) A school not residing in Kentucky, but seeking to do business in Kentucky, shall submit:

(a) Form PE-16, Application for Non-Resident School; and

(b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

Section 2. Annual Renewal License Application for Schools. (1) The annual renewal license application for a school residing in and doing business in Kentucky shall be the Form PE-17, Application for License Renewal Resident School.

(2) The annual renewal license application for a school not residing in Kentucky, but doing business in Kentucky, shall be the

Form PE-18, Application for License Renewal Non-Resident School.

(3) Each school shall:

(a) List each program for which it is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;

(b) Provide a copy of:

1. Its enrollment agreement noting each item that is required by ***KRS Chapter 165A[statute]***;

2. a. Its most recent audited financial statement, if the school is accredited; or

b. Its most recent financial income statement certified by an independent accountant, if the school is not accredited;

3. Its faculty and personnel handbook;

4. Its current catalog, certified***, true,[and true]*** and correct in content;

5. Any advertising and marketing materials utilized by the school;

6. Its occupational license and current fire inspection report;

7. Its organizational chart for each school; and

8. Its certificate of accreditation, if accredited; and

(c) Submit a Form PE-11, Form for Instructional Staff and Key Administrative Personnel.

Section 3. Permit Application for Agents. The permit application for each agent of a school licensed by the commission shall be the Form PE-19, Application for Permit to Act as an Agent, to seek initial approval with the commission, and the Form PE-20, Application for Renewal of Permit to Act as an Agent, to seek renewal with the commission annually.

Section 4. Transfer of Ownership of a School. The application for recording a transfer of ownership of a school licensed by the commission shall be the Form PE-21, Application to Transfer Ownership of a School.

Section 5. Change of Name of a School. The application for approval of a change of name of a school shall be the Form PE-22, Application to Change the Name of a School.

Section 6. Change of Location of a School. The application for approval of a change of location of a school shall be the Form PE-23, Application to Change the Location of a School.

Section 7. Application to Award an Associate Degree. The application to award an associate degree shall be the Form PE-10, Application to Award an Associate Degree.

Section 8. New Program. The application for approval of a new certificate or diploma program shall be the Form PE-14, Application for a New Program.

Section 9. Request for Transcript. The request for a transcript shall be the Form PE-28, Request for Transcript.

Section 10. Revision of an Existing Certificate, Diploma, or Associate Degree Program. (1)(a) The school shall submit written notification detailing cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period to the commission on a Form PE-12, Notification to Revise an Existing Program for Less Than 25%.

(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.

(2)(a) A school shall submit a Form PE-13, Application to Revise an Existing Program for 25% or More, to the commission if cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.

(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the commission in writing of the program name changes, course name changes, or course description changes.

Section 11. (1) Beginning in 2016 and every year thereafter, the school shall report its job placement rate per licensed program to the commission by January 15, and shall be the Form PE-39, Job Placement Reporting.

(2) The job placement rate in the field of study for the program shall be calculated as follows:

(a) Determine the total number of students who, during the immediately preceding July 1-June 30 period, graduated from the program;

(b) Of the total number determined under paragraph (a) of this subsection, determine the number of graduates who the school has documented as not available for employment due to health-related issues for individual or family member, death, active military duty, spouse or dependent of military personnel relocated due to military transfer, incarceration, visa restrictions, or continuing education at least half-time;

(c) Subtract the total number of graduates not available for employment in paragraph (b) of this subsection from the total number of graduates under paragraph (a) of this subsection. This difference shall be the denominator for the equation;

(d) Of the total number determined under paragraph (c) of this subsection, determine the number of graduates who obtained job placement in a position in the field of study***, in accordance with subsections (10) and (11)[as defined in subsection (9) and (10)]*** of this section. This shall be the numerator for the equation; and

(e) Divide the number of students determined under paragraph (d) of this subsection by the difference found in paragraph (c) of this subsection. This quotient converted to a percentage shall be the job placement rate.

(3) For purposes of the job placement rate calculation, the school shall obtain the placement data by contacting employers or graduates to obtain the relevant information under the definitions in subsections ***(10) and (11)[(9) and (10)]*** of this section. ***This[Such]*** contact and information shall be documented in writing, and shall include:

(a) Name of the employer;

(b) Name of the graduate;

(c) Addresses and telephone numbers of graduate and employer;

(d) Title of employment;

(e) Duties of employment;

(f) Length of employment;

(g) Total hours worked per pay period;

(h) Name and title of the person(s) providing the information to the school;

(i) Name and title of the person(s) at the school who received and recorded the information;

(j) The date the information was provided; ***and***

(k)***[When the school obtains the relevant information by telephone or personal contact, as opposed to a written document, the school shall send a confirming letter to the provider of the information setting forth in specific detail the information provided and the date it was provided. The school shall maintain a copy of the confirming letter and evidence it was sent; and***

(l)] Statement whether the school designated the graduate as placed in field or not.

(4) ***If the school obtains the relevant information by telephone or personal contact, as opposed to a written document, the school shall send a confirming letter to the provider of the information setting forth in specific detail the information provided and the date it was provided. The school shall maintain a copy of the confirming letter and evidence it was sent.***

(5) All data and information used by a school to support the job

placement rate, including any information that the graduate is not available for employment, shall be reliable, verifiable, and documented in writing.

(6)[(5)] Documentation supporting job placement rates for each applicable period for each program shall be maintained by the school in a retrievable and well-organized manner.

(7)[(6)] The job placement rates calculated by the school and the underlying documentation shall be subject to review and audit by the commission***, and the school shall pay any costs for a review and audit[and the costs for such shall be paid by the school]***. This may include requiring the school to:

(a) Submit graduate data to the Kentucky Center for Education and Workforce Statistics to include a graduate's name, date of birth, Social Security number, gender, ethnicity, residency at point of graduation, and the CIP code and level of the program from which the student graduated; and

(b) Have a certified public accountant report on the school's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(8) Another state agency shall not be prevented[(7) Nothing herein shall prevent any other state agency] from investigating, reviewing, or auditing the underlying documentation and the rates provided***, pursuant to 791 KAR Chapter 1, KRS Chapter 165A, or the Kentucky Consumer Protection Act, KRS 367.110-367.360[hereunder in accordance with any appropriate law, including the Kentucky Consumer Protection Act, KRS 367.110 et seq]***.

(9)[(8)] A school that operates a program that is intended to and only provides continuing education courses to attendees for the purpose of the attendee maintaining current licensure shall so certify to the commission. ***The[Such]*** school shall also obtain written statements from all attendees affirming that the person's purpose in attending courses offered by the school is to maintain current licensure. ***The[Such]*** school's certification to the commission and underlying written affirmations shall suffice for the calculation of job placement rates for that continuing education program.

(10) The conditions described in this subsection shall be required to qualify as job placement in a position in field of study.[(9) Job placement in a position in the field of study shall be defined as follows:]

(a) Within 180 days of graduating from the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study and the school shall document ***this employment[same]***.

(b) If a license or certification is required or generally requested for positions in the occupation, then within 180 days after the results are available from the first exam that the graduate would have been able to take after completing the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study.

(c) In addition to paragraph (a) or (b) of this subsection, for a part-time position in the field of study to be considered job placement, the school shall possess a handwritten statement from the graduate at time of completion that part-time employment is the graduate's objective for employment including a general explanation for ***this[such]*** objective.

(d) For self-employment to be considered as job placement, the school shall possess a handwritten statement from the graduate describing:

1. The work and demonstrating that it is in a position in the field of study;

2. That the graduate has received compensation in return for services provided in connection with the self-employment; and

3. That the graduate has completed at least 675 hours of work in connection with the graduate's self-employment, including time spent marketing the business, cultivating clients, negotiating contracts, and initiating or completing the work.

(11) The conditions described in this subsection shall be required to qualify as a position in field of study.[(10) Position in the field of study shall be defined as follows:]

(a) The graduate's employment shall be a position included in the most recent National Center for Education Statistics and U.S. Bureau of Labor Statistics CIP-SOC Crosswalk for the program studied identified by the six (6) digit U.S. Department of Education classification of instructional program code, and the routine work shall predominantly require using the core skills and knowledge expected to have been taught in the program and the position shall require education beyond high school level***.[; or]***

(b) ***If[In instances where]*** graduates are continuing in prior employment, the graduate's prior employment position shall be reasonably related to the program training and the graduate ***shall attest[attests]*** in the graduate's handwriting ***when[at the time of]*** enrolling in the program and upon completion of the program, with reference to a specific written policy of the employer, to the benefit of the training as a catalyst for maintaining or advancing in a position.

(12)[(11)] Failure to comply with this section shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Resident School", Form PE-15, 2013;

(b) "Application for Non-Resident School", Form PE-16, 2013;

(c) "Application for License Renewal Resident School", Form PE–17, 2013;

(d) "Application for License Renewal Non-Resident School", Form PE-18, 2013;

(e) "Form for Instructional Staff and Key Administrative Personnel", Form PE-11, 2013;

(f) "Application for Permit to Act as an Agent", Form PE-19, 2013;

(g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2013;

(h) "Application to Transfer Ownership of a School", Form PE-21, 2013;

(i) "Application to Change the Name of a School", Form PE-22, 2013;

(j) "Application to Change the Location of a School", Form PE-23, 2013;

(k) "Application to Award an Associate Degree", Form PE-10, 2013;

(l) "Application for a New Program", Form PE-14, 2013;

(m) "Request for Transcript", Form PE-28, 2013;

(n) "Notification to Revise an Existing Program for Less Than 25%", Form PE-12, 2013;

(o) "Application to Revise an Existing Program for 25% or More", Form PE-13, 2013; and

(p) "Job Placement Reporting", Form PE-39, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

CONTACT PERSON: Robert Curry, Acting Executive Director; Kentucky Commission on Proprietary Education; 500 Mero Street, 3rd floor, Capital Plaza Tower; Frankfort, KY 40601, phone(502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2104)

791 KAR 1:020. Standards for Licensure[approval of Associate Degree Programs].

RELATES TO: KRS 165A.310(5), 165A.330***, 165A.340, 165A.350, 165A.360[(2)]***, 165A.370(1)***, 165A.390, 165A.450***

STATUTORY AUTHORITY: KRS ***165A.340(6), 165A.360(2), (7)[165A.330(1), 165A.340(3), (7), 165A.360(1), (2), (7),***

~~165A.370(1)~~], 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.360(2) requires the commission to establish application forms and fees. KRS 165.360(7) authorizes the commission to promulgate administrative regulations requiring supporting documentation to accompany application. This administrative regulation establishes the application requirements and incorporates forms by reference[~~KRS 165A.370(1) requires that a school shall not be issued a certificate of approval until the commission~~]***[Board]***[~~has determined the school is in compliance with minimum standards leading to the awarding of a certificate, a diploma, or an associate degree which indicates the satisfactory completion of a program of study. This administrative regulation establishes the requirements for a school to be licensed by the commission~~]***[~~award an associate degree~~].

Section 1. A school shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The school shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements required by 791 KAR 1:010;

(b) The name and contact information of the bank or other financial institution used by the school as a reference;

(c) Good standing with 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; and

(d)[~~(e)~~] A school surety bond or other collateral***, in accordance with[~~per~~]*** KRS 165A.360 and 791 KAR 1:150***,*** and agent surety bond or other collateral***, in accordance with[~~per~~]*** KRS 165A.350 and 791 KAR 1:150.

(2) Accreditation.

(a) If a school is accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish information regarding its accreditation status.

(b) If a school is not accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish a statement indicating if, when, and from whom the school will seek accreditation.

(c) A school shall not:

1. Be the subject of an interim action by a state agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

2. Have had its state license suspended, revoked, or terminated, even if the required due process procedures have not been completed;

3. Have been denied candidacy or accreditation by an accrediting agency;

4. Have voluntarily withdrawn its candidacy or accreditation while not in good standing from an accrediting agency;

5. Have had its candidacy or accreditation withdrawn or been placed on public probation by an accrediting agency;

6. Be the subject of an interim action by an accrediting agency potentially leading to the suspension, revocation, or withdrawal of candidacy or accreditation; or

7. Have been notified of the loss of any agency's accreditation even if the due process procedures have not been completed.

(3) Agents. A school shall be responsible for the actions of its ***agent when the agent is[~~agents when~~]*** acting on behalf of the school***.[~~, and~~]*** An agent shall have an agent permit and agent bond***, in accordance with[~~per~~]*** KRS 165A.350 and 791 KAR 1:150 and shall comply with KRS 165A.330.

(4) Personnel requirements.

(a) The school shall furnish information regarding the administrative officer, the directors, the owners, and the instructors on the Form PE-11, Form for Instructional Staff and Key Administrative Personnel***, incorporated by reference in 791 KAR 1:010.***

(b) The chief administrator shall be qualified pursuant to KRS 165A.370(1)(d).

(c) Each qualifying degree possessed by personnel shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

(d) Verification of credentials. A school shall maintain official transcripts for credentials that qualify instructors to teach their assigned courses and for those credentials that are listed in the catalog. All these credentials shall be on file in the administrative offices at the campus location nearest to where the instructor is primarily employed.

(e) A principal party, owner, or administrator involved with the school shall not have had a felony conviction involving moral turpitude, fraud, or a capital crime.

(f) Instructor qualifications. To teach, an instructor shall comply with KRS 165A.370(1)(e). Appropriate training or experience related to the responsibilities of the position shall include a high school diploma or GED along with one (1) or more of the following:

1. Completed a training or degree program in the applicable occupational area;

2. Demonstrated outstanding professional experience;

3. Demonstrated outstanding professional contributions to the discipline being taught; or

4. Professional licensure or certification in the field.

(g) Teaching loads of instructors 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.

(h) Instructor development.

1. A school shall establish instructor development plans including both in-service and professional growth activities to enhance instructor expertise.

2. There shall be documented evidence on an annual basis of these development plans and their implementation.

3. A school shall establish plans that are appropriate given each instructor's training, education, and related work experience and that provide the proper mix of in-service training and professional growth based on the academic and experiential background of the instructor.

(5) Facilities and equipment.

(a) Enrollment shall not exceed the design characteristics of the facilities.

(b) A school 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.

(c) If a school has an expansion of a school facility, it shall comply with 791 KAR 1:160.

(d) If a school has multiple campuses, it shall comply with 791 KAR 1:150.

(e) If a school is only seeking licensure with the commission to offer a course or courses not for college credit, and it will not conduct its course or courses at a permanent location but rather will utilize the facilities of hotels or other public buildings, it shall:

1. Notify the commission in writing, at least thirty (30) days in advance of the location where any course will be offered;

2. Receive prior approval of the Kentucky Real Estate Commission, the Kentucky Insurance Commission, the Kentucky Bar Association, or other appropriate official agency or group authorized to approve the course or courses; and

3. Not advertise or promote the course or courses until the commission has received in writing the course content, name and qualification of the instructor, and a copy of the approval to offer the course from an authorizing agency.

(6) Library resources. The library shall be appropriate to support the programs offered by the school in accordance with this subsection.

(a) A school, through ownership or formal agreements, shall provide and support student and instructor 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 program level offered by the school, and shall be sufficient to support all educational, research, and public service programs at the school.

(b) A school 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 commission ***with the[~~at the time of~~]*** license application, and prior to the offering of any courses.

(c) A school that is dependent on another school or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the commission and to students and instructors.

(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 schools of similar types.

(e) Library staff shall be qualified as required for accredited schools of similar types.

(f) The school shall have sufficient seating and work space for a reasonable proportion of the instructors and students to be accommodated at one (1) time.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(7) Curriculum.

(a) A course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited schools if the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level. A course may be offered that is not transferable based on the uniqueness of a program that is occupational in nature.

(b) A school shall have a systematic program of curriculum revision in order to maintain the general standards of accredited schools with similar programs.

(c) A school shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(d) A school shall offer with sufficient frequency the courses required for each program for the student to complete the program within publicized time frames.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program shall include:

(a) Adequate supervision by the school; and

(b) Other instructional support necessary to maintain the program.

(9) Truth in advertising. A school shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or other materials produced by or on behalf of the school which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the school, its personnel, its services, 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 school shall not indicate that the school is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Kentucky Commission on Proprietary Education, or by any other state agency. A statement using the name of the Kentucky Commission on Proprietary Education, if any, shall be in exactly the following form: "(Name of School) is licensed by the Kentucky Commission on Proprietary Education."

(c) A school shall:

1. Publicly disclose, both in print and Web-based materials, information about its student enrollment, degrees conferred, and job placement rate of program graduates in the field of study as reported to the commission***, in accordance with[~~per~~]*** 791 KAR 1:010 and ***[~~per~~]*** KRS 165A.340(6); and

2. Use numbers most recently reported to the commission in its advertising.

(d) A school shall publicly disclose information about articulation agreements and transfer of credits***, in accordance with[~~per~~]*** KRS 165A.340(6)(a)2.c., and shall furnish copies of the articulation agreements and rights and responsibilities of students regarding transfer of credits to the commission.

(e) The commission staff may require that a school furnish proof to the commission of any of its advertising claims. If proof cannot be furnished, a retraction of the advertising claims published in the same format as the claims themselves shall be published by the school and the continuation of the advertising shall be grounds for denial, suspension, or revocation of the school's license.

(10) Recruitment and enrollment procedures. A school shall furnish the following to each prospective student prior to enrollment, and shall require that the student sign and date the school's form to be placed in the student's file, which shall either be part of the enrollment contract or a pre-enrollment checklist verifying that the student received:

(a) The school's most recent catalog including 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;

(e) The complaint procedures available to students, including the process for filing a complaint with the commission;

(f) The existence of the student protection fund created in KRS 165A.450; and

(g) The student enrollment application, contract, or agreement.

(11) Student affairs.

(a) Students admitted to the school shall have completed a state-approved secondary school program or its equivalent.

(b) The school shall provide academic advising by instructors or staff to each student at the time of admission and throughout the program.

(c) The school shall make assistance and advising available to each student who completes a technical or vocational program for the purpose of assisting the student with ***relevant[~~an appropriate~~]*** job placement or with transfer.

(d) The school shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) The school shall comply with recordkeeping requirements***, in accordance with[~~per~~]*** KRS 165A.370 and 791 KAR 1:027.

(f) Administrative officers of the school 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.

(g) A school shall make provision for the maintenance of student records if the school ceases operations. The location of student records shall be approved in advance by the commission in accordance with KRS 165A.390(5). A school shall comply with KRS 165A.450.

(12) School policies.

(a) The school shall maintain records in an orderly manner and make them available for inspection by the commission or its 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 school including:

1. General information:

a. Official name and address of the school, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The school'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 instructors, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the school;

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 policy**,** and 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 programs offered.

(13) Site visits.

(a) The commission shall conduct site visits in accordance with KRS 165A.370(1) and (2).

(b) The costs of the site visit shall be paid in accordance with 791 KAR 1:025.

(c) The commission may ***conduct[or may have conducted]*** an announced or unannounced site visit of a licensed school during reasonable business hours to inspect the files, facilities, and equipment**,** as well as conduct interviews to determine the school's compliance with this administrative regulation and KRS Chapter 165A.

(d) Within ninety (90) working days of receipt of a complete application or annual report, the commission may conduct***[or may have conducted]*** a site visit.

(e) The purpose of a site visit shall be to make an assessment of a school using the standards for licensure as set forth in this administrative regulation.

(f) Failure to provide full access to the school's files, facilities, and equipment**,** or prevention of interviews**,** shall be grounds for***:***

1. Denial of a license***;[,]*** or

2. Suspension or revocation of an existing license.

Section 2. General Standards for Approval of Associate Degree Programs. (1) In addition to meeting the requirements and standards in Section 1 of this administrative regulation, a school requesting consideration for approval to award an associate degree shall:

(a) Have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the application;

(b) Be accredited by an accrediting agency recognized by the United States Department of Education;

(c) Meet the standards set forth in KRS 165A.370 and this administrative regulation;

(d) File ***with the commission*** a completed, signed, and dated Application to Award an Associate Degree (Form PE-10)**,** ***incorporated by reference in 791 KAR 1:010[with the commission]***[board];[and]

(e) Pay the fee for application to award an associate degree set forth in 791 KAR 1:025[201 KAR 40:025], Section 8;

(f) Ensure that marketing techniques and advertisements shall not guarantee employment;

(g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the commission[board] office for review, and written approval of the application is received from the commission[board]; and

(h) Be inspected by a member of the commission**,**[board] or commission[board] designee**,** with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.

(2) A class in the program shall not commence before the inspection report evidences that the program is in compliance.

Section 3.[2.] Associate of Arts Degree or Associate of Science Degree. (1) The granting of an associate of arts degree or associate of science degree shall be limited to a school accredited by an accrediting agency recognized by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study.

(a) Of the total credit hours, a minimum of thirty (30) semester credit hours or forty-five (45) quarter credit hours, shall be in the appropriate business, technical, or other major field of study as indicated in the program title and description.

(b)1. A minimum of fifteen (15) semester credit hours or twenty-two and one-half (22 1/2) quarter credit hours, shall be required in general education studies.

2. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities, and shall offer balance to the total program.[~~(3)(a) At least one-half (1/2) of those subjects which are part of the curriculum in an associate of arts degree or an associate of science degree program shall be taught by faculty members possessing:~~

~~1. Related graduate, professional, or baccalaureate degrees; or~~

~~2. Professional certification.~~

~~(b) An exception to the requirement of an advanced degree may be justified for instructors of subjects in areas which are not normally academically credentialed or which are not normally credentialed with graduate degrees.~~]

Section 4.[3.] Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an associate of applied science degree or associate of occupational studies degree is limited to schools accredited by an accrediting agency recognized by the U.S. Department of Education, as a business or specialized school.

(2)(a) The associate of applied science degree or associate of occupational studies degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours.

(b) The degrees shall have at least nine (9) semester hours, thirteen and one-half (13 ½) quarter hours, or its recognized clock hour equivalent in general education or applied general education studies. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities. Applied general education studies shall include courses that apply to a specific occupation (e.g., technology, medication math, psychology for health professionals, and business math) and also satisfy general education requirements[~~These degrees shall not require the inclusion of general education studies courses, but general education studies courses may be a part of the program.~~

~~(3) Faculty qualifications shall require that a minimum of a baccalaureate degree is held by faculty or that faculty possess the following alternate competency:~~

~~(a) Professional licensure or certification in the specialized area or in a related specialized area; or~~

~~(b) Postsecondary education or training, plus at least two (2) years of documented practical experience in the specialized area or in a related specialized area~~].

Section 5.[4.] Additional Standards. (1) ***An associate degree granting school approved by this commission shall follow the additional standards established in this section.[Additional standards applicable to an associate degree granting school approved by this commission]***[board]***[include:]***

(a) The library or learning resource center items shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which shall be appropriate for the program offered.

(b) The library or learning resource center shall be accessible for all students to use the items and shall provide access to materials at hours other than times classes are being taught.

(c)1. A designated staff member shall be responsible for the library or learning resource center, and sufficient funds for support of the facility and acquisition of library or learning resource center items shall be provided.

2. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered and shall be in sufficient quality and quantity to accommodate the current student enrollment.

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered.

(f)1. A catalog shall be printed containing a description for each course that is required or which may be taken to meet the requirements for the degree.

2. The catalog shall include all prerequisites.

(g) All promotional literature and advertising shall appropriately identify the degree offered.

(h)1. ***The school shall submit*** a completed Form for Instructional Staff and Key Administrative Personnel (Form PE-11) for each instructor***, incorporated by reference in 791 KAR 1:010,[shall be submitted]*** to the commission[~~board~~] before classes listed on the application begin.

2. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor in the degree program shall be maintained on file at the school.

(i) The school shall maintain on file a current course syllabus for each course taught.

(j) The school shall maintain on file for the commission[~~board~~] or its designee a copy of its last accreditation self-study and correspondence with accrediting agencies.

(2) The school shall make the following materials available to a member of the commission[~~board~~] or its designee at the on-site visit:

(a) Promotional literature;

(b) School catalog;

(c) Course syllabi;

(d) Inventory of classroom equipment;

(e) Student files;

(f) Faculty files;

(g) Staff files;

(h) A list of all personnel by position indicating part-time and full-time employees; and

(i) A current organizational chart.

Section 6. Failure to Meet Standards for Licensure. ***(1)*** A school's failure to meet the standards for licensure set forth in this administrative regulation shall be grounds for***:***

(a) Denial of a license***;[;]*** or

(b) Suspension or revocation of an existing license.

(2) The commission shall notify the school by registered mail, return receipt, of the denial, suspension, or revocation of the school's license[~~Section 5. Revision of an Existing Associate Degree Program. (1)(a) Written notification detailing cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered) or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period shall be submitted to the commission on a Notification to Revise an Existing Program for Less Than 25% (Form PE-12).~~

~~(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.~~

~~(2)(a) A school licensee shall submit an Application to Revise an Existing Program for 25% or More (Form PE-13) for approval by the commission if cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered), or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.~~

~~(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.~~

~~(3) A school shall notify the commission in writing of program name changes, course name changes, or course description changes.~~

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

~~(a) "Application to Award an Associate Degree", Form PE-10, 2007 edition;~~

~~(b) "Form for Instructional Staff and Key Administrative Personnel", Form PE-11, 2007 edition;~~

~~(c) "Notification to Revise an Existing Program for Less Than 25%", Form PE-12, 2007 edition; and~~

~~(d) "Application to Revise an Existing Program for 25% or More", Form PE-13, 2007 edition.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m~~].

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, KY 40601, phone (502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:025. Fees.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9), 165A.380***, 165A.420***

STATUTORY AUTHORITY: KRS 165A.340***[(3),]***(6), (10), ***[165A.370(4),]*** 165A.390, 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340***[(3),]***(6)***[;]*** and (10), 165A.400, and 165A.450 authorize[~~authorizes~~] the commission[~~board~~] to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A, including establishment of fees and other charges. This administrative regulation establishes the fees for the Kentucky Commission on Proprietary Education[~~applications for initial licensure and renewal of licensure for resident and non resident schools, issuance of initial permits and renewals for agents of proprietary schools, award of associate degree, change of the name of a proprietary school, change of location of a proprietary school, addition of a new certificate or diploma program, revision of an existing program, transfer of ownership, transcript requests from a closed proprietary school, and contributions to the student protection fund~~].

Section 1. Definitions. (1) "Actual cost" means the amount sufficient to reimburse the commission for all travel and expenses incurred, including the expense of contract labor, consultant fees, or other miscellaneous expenses necessitated by a site visit or inspection.

(2) "Gross revenue"[~~"Net tuition income"~~] means the total amount of tuition earned by a[~~the resident~~] school less any tuition refunds to the students during the immediate past school year, July 1 through June 30[~~calendar year, January 1 through December 31~~].

(3)[~~(2)~~] "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change in control.

Section 2. Initial Licensure Fee and Student Protection Fund Contribution[for Schools]. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be $500[$300 and shall accompany Form PE-15, Application for Resident School].

(2) The initial[one (1) time] contribution to the student protection fund for a school residing in and doing business in Kentucky shall be $500[$300, to be paid and shall accompany Form PE-15, Application for Resident School].

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be $1,250[$900, and shall accompany Form PE-16, Application for Non-Resident School].

(4) The initial[one time] contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be $1,250[$900, to be paid and shall accompany Form PE-16, Application for Non-Resident School].

(5) At any time the balance in the student protection fund falls below $500,000, each licensed school shall make an additional contribution to the fund. The amount of the additional contribution shall be determined by the commission pursuant to KRS 165A.450(2)(a) and (b). The commission shall calculate the amount due per school***, pursuant to[per]*** Section 3(1) and (2) of this administrative regulation**,** and shall use a percentage appropriate to replenish the fund. The additional contribution shall be paid on a quarterly basis until the fund is replenished[The initial licensure fee and student protection fund contribution shall not be prorated or refundable].

Section 3. Annual Renewal License Fee for Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be $500[$300 for schools whose net tuition income does not exceed $50,000, plus fifteen (15) dollars for each additional $10,000 of net tuition income in excess of $50,000, not to exceed $2,000. The annual renewal license fee shall accompany Form PE-17, Application for License Renewal Resident School].

(b) If the school's gross revenue exceeds $50,000, the annual renewal license fee for a school residing in and doing business in Kentucky shall be $500 plus twenty-five (25) dollars for each additional $10,000 of gross revenue in excess of $50,000, not to exceed $3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be $1,250[$900].

(b) If the school's gross revenue exceeds $50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be $1,250 plus twenty-five (25) dollars for each additional $10,000 of gross revenue for Kentucky residents in excess of $50,000, not to exceed $3,000[The annual renewal fee shall accompany Form PE-18, Application for License Renewal Non-Resident School].

(3) Late fees for a resident or nonresident school's annual renewal license shall be:

(a) Ten (10) percent of the total application fee if received after the due date, May 15, up to and including the fifth business day;

(b) Twenty (20) percent of the total application fee if received after the fifth business day**,** up to and including the tenth business day;

(c) Thirty (30) percent of the total application fee if received after the tenth business day**,** up to and including the fifteenth business day;

(d) Forty (40) percent of the total application fee if received after the fifteenth business day**,** up to and including the twentieth business day;

(e) Fifty (50) percent of the total application fee if received after the twentieth business day**,** up to and including the twenty-fifth business day;

(f) Seventy-five (75) percent of the total application fee if received after the twenty-fifth business day**,** up to and including the thirtieth business day; and

(g) 100 percent of the total application fee if received after the thirtieth business day[The annual renewal license fees for both resident and nonresident schools shall not be prorated or refundable].

Section 4. Annual Permit Fees for Agents.[(1)] The annual permit fee for each agent working for a school licensed by the commission[board] shall be $175[$150 and shall accompany either Form PE-19, Application for Permit to Act as an Agent, or Form PE-20, Application for Renewal of Permit to Act as an Agent, whichever is applicable.

(2) The annual permit fee and the annual permit renewal fee for agents shall not be prorated or refundable].

Section 5. Transfer of Ownership of a School.[(1)] The fee for recording a transfer of ownership of a school licensed by the commission[board in accordance with 791 KAR 2:160] shall be $500[, and shall accompany Form PE-21, Application to Transfer Ownership of a School.

(2) The fee for recording a transfer of ownership shall not be prorated or refundable].

Section 6. Change of Name of a School.[(1)] The fee for approval of a change of name of a school shall be $150[$100, and shall accompany Form PE-22, Application to Change the Name of a School.

(2) The fee for approval of a change of name of a school shall not be prorated or refundable].

Section 7. Change of location of a school.[(1)] The fee for approval of a change of location of a school shall be $500[, and shall accompany Form PE-23, Application to Change the Location of a School.

(2) The fee for approval of a change of location of a school shall not be prorated or refundable].

Section 8. Application to Award an Associate Degree.[(1)(a)] The fee for an application to award an associate degree[in accordance with 791 KAR 1:020] shall be $750[$500] per degree[, and shall accompany Form PE-10, Application to Award an Associate Degree, referenced by 791 KAR 1:020.

(b) If a school simultaneously submits multiple applications for approval of associate degrees, the fee shall not exceed $1,000 per school.

(2) The fee for application to award an associate degree shall not be prorated or refundable].

Section 9. New Program.[(1)] The fee to apply for[approval of] a new certificate or diploma program shall be $200[$150, and shall accompany Form PE-14, Application for a New Program.

(2) The fee for approval of a new certificate or diploma program shall not be prorated or refundable].

Section 10. Program Revisions; Certificate, Diploma, and Degree. (1) The fee to apply for approval to revise twenty-five (25) percent[(25)] or more of any existing program[, as established in 791 KAR 1:020, Section 5(2)] shall be $200[$150, and shall accompany Form PE-13, Application to Revise an Existing Program for 25% or More].

(2) The fee to apply for approval to revise less than twenty-five (25) percent of any program shall be $100[The fee for approval to revise an existing program shall not be prorated or refundable].

Section 11. Transcript Requests from a Closed School. The fee for requesting a transcript from a closed school shall be five (5) dollars[Maximum Fee. A school with multiple locations simultaneously filing applications for commission approval for more than one transfer of ownership, change of name, change of location, addition of a new program, revision of an existing program or associate degree, shall not pay more than $1,000].

Section 12. Cost of site visits. (1) Costs connected with a site visit **conducted in accordance with KRS 165A.370(1) and (2)[and subsequent visits as may be necessary]**, such as travel, meals, lodging, and consultant honoraria, shall be paid by the school.

(2) The estimated cost of the site visit shall be paid by the school prior to the site visit.

(3) The final settlement regarding actual expenses incurred shall

be paid by the school no later than thirty (30) days after receipt of the invoice.

(4) Failure to pay these costs shall be grounds for***:***

1. Denial of a license***;[;]*** or

2. Suspension or revocation of an existing license.

(5) This section shall not apply to visits conducted in accordance with KRS 165A.475(3) and (4).

Section 13. Proration or Refund of Fees and Contributions. A fee paid to the commission or contribution to the student protection fund shall not be prorated or refunded.

Section 14. Penalties. A school shall have a license suspended or revoked, be directed to take specific corrective actions, or submit to additional inspections, with and without notice for failure to pay fees or contribute to the student protection fund in accordance with this administrative regulation[~~Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for a New Program", Form PE-14, 2007 edition;~~

~~(b) "Application for Resident School" Form PE-15 2007 edition;~~

~~(c) "Application for Non-Resident School", Form PE-16, 2007 edition;~~

~~(d) "Application for License Renewal Resident School", Form PE–17, 2007 edition;~~

~~(e) "Application for License Renewal Non-Resident School", Form PE-18, 2007 edition;~~

~~(f) "Application for Permit to Act as an Agent", Form PE-19, 2007 edition;~~

~~(g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2007 edition;~~

~~(h) "Application to Transfer Ownership of a School", Form PE-2, 2007 edition;~~

~~(i) "Application to Change the Name of a School", Form PE-22, 2007 edition; and~~

~~(j) "Application to Change the Location of a School", Form PE-23, 2007 edition.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commision on Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m~~].

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at noon

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:030. Procedures for hearings.

RELATES TO: KRS Chapter 13B, 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS ***165A.340(6)[~~Chapter 13A, 165A.350(4)(b), 165A.360(3)(b)~~]***, 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6)[~~(3)~~] and 165A.400 authorize the commission[~~board~~] to promulgate administrative regulations ***for the administration of KRS Chapter 165A.[~~KRS 165A.350(4)(b), 165A.360(3)(b), and 165A.370(4) provide for hearings, but do not prescribe procedures.~~]*** This administrative regulation establishes hearing procedures.

Section 1. Definitions. (1)[~~"Chair" means the chair or vice-chair of the commission.~~

~~(2)~~] "Charge" means a specific allegation contained in a formal pleading[~~complaint~~], as established in Section 5(3) of this administrative regulation, issued by the commission[~~board~~] alleging a violation of a specified provision of KRS Chapter 165A or the requirements established in 791[~~201~~] KAR Chapter 1[~~40~~].

(2)[~~(3)~~] "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the requirements established in 791[~~201~~] KAR Chapter 1[~~40~~], or another state or federal statute or ***administrative*** regulation applicable to an agent or school.

(3)[~~(4)~~] "Complaint committee" means the committee appointed pursuant to KRS 165A.340***[~~and further defined in Section 2 of this administrative regulation~~]***.

(4)[~~(5)~~] "Formal pleading[~~complaint~~]" means a formal administrative statement[~~pleading~~] authorized by the commission[~~board~~] which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding**,** pursuant to KRS Chapter 13B**,** or requests a court to take action.

(5)[~~(6)~~] "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6)[~~(7)~~] "Investigator" means an individual designated by the commission[~~board~~] to assist the commission[~~board~~] in the investigation of a complaint or an investigator employed by the Attorney General for the commission[~~board~~].

Section 2. Complaint Committee. ***In accordance with KRS 165A.340(12),*** the complaint committee shall:

(1) Be appointed by the chair of the commission[~~board~~] to:

(a) Review complaints and investigative reports;

(b) Participate in an informal proceeding to resolve[~~formal~~] complaints; and

(c) Make recommendations for disposition of complaints to the full commission including the dismissal of a complaint or the issuance of a formal pleading[~~board~~]; and

(2) Consist of three (3) persons who may be assisted by the commission[~~board~~] staff and counsel to the commission[~~board~~].

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity.

(2)(a) A complaint shall be in writing and shall be filed on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records[~~signed and certified as to its truth by the person offering the complaint~~].

(b) The Form PE-24 shall be signed and certified as to its truth by the person offering the complaint[~~The commission may file a complaint based on information in its possession.~~

~~(c) A compliant shall be filed with the commission on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records~~].

(3)[~~(2)~~](a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint and the time and place of the complaint committee hearing, once established.

(b) The agent or school shall file a written response with the commission[~~board~~] within ten (10) days from the date of receipt.

(4)[~~(3)~~](a) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant***, along with[~~and~~]*** the time and place of the complaint committee hearing, once established.

(5)[~~(b) The complainant shall have ten (10) days from the date of receipt to submit to the commission a written reply.~~

~~(4)~~] Upon receipt of the agent or school's response[~~complainant's reply~~], the complaint committee may request an additional response from the complainant, agent**,** or school if additional issues are raised or clarification is needed.

Section 4. Initial Review. (1)[~~(a)~~] After the receipt of a complaint or the expiration of the period for the response, the complaint committee shall consider the complaint, response,[~~and complainant's reply to the response,~~] and other relevant material available[~~, and make a recommendation to the commission.~~

~~(b) The commission shall determine whether there is enough evidence to warrant a formal investigation of the complaint~~].

(2)(a) The complaint committee may take steps to enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(b) An agreed order or settlement reached through this process shall be approved by the commission.

(c) The complaint committee may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(3) If the complaint committee determines a complaint warrants an investigation against either an agent or school, the complaint committee shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity[~~(2) If the commission determines that a complaint does not warrant a formal investigation against an agent or school, or the issuance of a formal complaint against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.~~

~~(3) If the commission determines that a complaint warrants a formal investigation against either an agent or school, then the commission shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity~~].

Section 5. Results of Initial Review[~~Formal Investigation; Commission Decision on Hearing.~~] (1) After a complete review of the complaint, and implementation of any actions available to the complaint committee as set forth in Section 4 of this administrative regulation, a recommendation shall be made by the complaint committee to the commission.

(2) If the commission determines a complaint does not warrant further action or the issuance of a formal pleading against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.

(3) If the commission determines a violation of a statute or administrative regulation may have occurred or has occurred, then the commission shall:

(a) Direct the complaint committee or commission staff to undertake further action as established in KRS Chapter 165A or Section 4 of this administrative regulation;

(b) Direct the issuance of a formal pleading against either an agent or school by commission staff; or

(c) Review the formal pleading and, if approved, it shall be signed by the chairman and served upon the agent or school as required by KRS 13B.050[~~Upon completion of a formal investigation, the complaint committee shall consider the facts regarding the complaint.~~

~~(a) The committee shall review an investigative report and supporting documents and make a recommendation to the commission.~~

~~(b) The commission shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a formal complaint shall be filed.~~

~~(2)(a) If the commission determines that a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, then the complaint shall be dismissed or other appropriate action taken.~~

~~(b) The commission shall notify both the complainant and the agent or school of the outcome of the complaint.~~

~~(3)(a) If the commission determines that a complaint warrants the issuance of a formal complaint against an agent or school, then a formal complaint which states clearly the charge or charges to be considered at the hearing shall be prepared~~

~~(b). The formal complaint shall be reviewed by the commission and, if approved, signed by the chairman and served upon the agent or school as required by KRS 13B.050.~~

~~(4) If the commission determines that an individual or school may be operating without the appropriate permit or license, then the commission shall:~~

~~(a) Authorize the commission administrator to send a letter to the individual or school advising them that they may need a permit or license, and enclose the appropriate application package;~~

~~(b) Authorize commission counsel to issue a letter ordering that individual or school to cease and desist from operating the school;~~

~~(c) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or~~

~~(d) Initiate action in Franklin Circuit Court for injunctive relief~~].

Section 6. Operating without Appropriate License or Permit. If the commission receives a complaint that an individual or school may be operating without the appropriate permit or license, the commission shall:

(1) Authorize commission staff to send a letter to the individual or school advising ***of a possible need for[~~them they may need~~]*** a permit or license, and enclose the appropriate application package;

(2) Authorize commission staff to issue a letter ordering the individual or school to cease and desist from operating the school;

(3) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(4) Initiate action in Franklin Circuit Court for injunctive relief[~~Settlement by Informal Proceedings and Letter of Admonishment. (1) The commission, through counsel and the complaint committee, may enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.~~

~~(a) An agreed order or settlement reached through this process shall be approved by the commission and signed by the commission chairman and the agent or school which is the subject of the complaint, and the chairman.~~

~~(b) The commission may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.~~

~~(2)(a) The commission may issue a written admonishment to the agent or school if the commission determines that~~

~~1. An alleged violation is not of a serious nature; and~~

~~2. The evidence presented to the commission after the investigation and appropriate opportunity for the agent or school to respond, provides a clear indication that the alleged violation did in fact occur.~~

~~(b) A copy of the admonishment shall be placed in the permanent file of the agent or school.~~

~~(c) Within thirty (30) days of receipt of an admonishment, the agent or school shall file:~~

~~1. A response to the admonishment which shall be placed in the agent's or school's permanent licensure file; or~~

~~2. A request for hearing with the commission. Upon receipt of this request, the commission shall set aside the written admonishment, file a formal complaint, and set the matter for hearing pursuant to the provisions of KRS Chapter 13B~~].

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

(a) "Form to File a Complaint", Form PE-24, 2013[~~(2007~~] edition[~~)~~]; and

(b) "Authorization for Release of Student Records", Form PE-25, 2013[~~(2007~~] edition[~~)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on[~~State Board for~~] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:035. Student protection fund.

RELATES TO: KRS 165A.450
STATUTORY AUTHORITY: KRS ***165A.340(6), 165A.400[13A.100, 165A.340(3)]***, 165A.450
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.450 requires the commission to promulgate administrative regulations to ensure there is a renewable student protection fund, impose fees when the balance of the fund drops below the minimum, and establish other requirements related to the fund. This administrative regulation establishes standards for distribution of the funds[KRS 165A.450 requires each school licensed by the Kentucky Commission on]***[Board for]***[Proprietary Education to contribute to a student protection fund in accordance with 791 KAR 1:025]***[an amount equal to its licensing fee]***[. The statute mandates that the fund shall be used to pay off debts incurred due to the closing of a school, discontinuance of a program, loss of license, or loss of accreditation, and this administrative regulation sets forth standards for distribution of the funds]***.

Section 1. Definitions. (1) "Commission"["Board"] means the Kentucky Commission on[State Board for] Proprietary Education.
(2) "Schools" means all schools, resident and nonresident, licensed by the commission[board].
(3) "Sponsor" means the original source of funds, whether student or entity, used to pay student charges for tuition, books, and fees.
(4) "Student enrolled" means a student currently enrolled and attending classes on a regular basis.

Section 2. Student Protection Fund Notice. Schools shall include on the student enrollment agreement, in 14 point type font:
(1) A statement notifying students of the existence of the student protection fund; and
(2) The process for filing a claim against the fund.

Section 3. Standards for Fund Distribution. (1) The commission[board] ***shall[is to]*** manage the student protection fund ("the fund"). The fund shall be used ***in accordance with KRS 165A.450[to pay off debts, including refunds to students enrolled or on leave of absence by not being enrolled for one (1) academic year or less from the school at the time of closing, incurred due to the closing of a school, discontinuance of a program, loss of license, or loss of accreditation by a school or program]***[solely to provide restitution to each student enrolled who has suffered pecuniary loss, when:
(a) A school closes, either voluntarily or involuntarily;
(b) The student can no longer continue his education at the school; and
(c) No viable alternative for full restitution is available, as determined by the commission].
(2) Each fund distribution for restitution shall be made payable to the appropriate sponsor, as determined by the commission and shall be made upon the presentation of a signed ***Form for Claims Against the*** Student Protection Fund***,[Claim]*** Form PE-38, and supporting documentation, verifying the student's enrollment and regular attendance at the time of the school or program closure. ***The commission may require supporting documentation, such as canceled checks, loan documents, or other documentation that supports the student's entitlement to restitution[The supporting documentation may include canceled checks, loan documents, or other documentation that in the commission's discretion supports the student's entitlement to restitution]***[board].
(3) The amount to be refunded shall equal the actual amount of loans and cash that have been applied to tuition, books, and fees on behalf of the student's attendance at the school. If the claims resulting from a school closing exceed the balance in the fund, the commission[board] shall provide for a pro rata distribution of the fund balance.
(4)[(3)] ***If[Whenever]*** restitution is paid by the fund, the fund shall be subrogated to the amount of the restitution.
(5) In order to be considered, a claim for restitution from the student protection fund shall be made within one (1) year of the date of the school or program closure.
(6) An applicant for payment from the student protection fund who is dissatisfied with the decision of the commission may ask for reconsideration of the commission's determination regarding eligibility for restitution from the student protection fund.
(7) The request for reconsideration shall be submitted by the applicant to the commission within thirty (30) calendar days of the mailing date of the commission's decision.
(8) The request for reconsideration shall be signed by the student and explain the reasons in support of a different decision.
(9) Within forty-five (45) days of receipt of the request for reconsideration, the commission shall make a final determination and provide notice to the applicant.

Section 4. Incorporation by Reference. (1) "***Form for Claims Against the*** Student Protection Fund***[Claim Form]***", Form PE-38, January 2014, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director
APPROVED BY AGENCY: June 9, 2014
FILED WITH LRC: June 12, 2014 at 4 p.m.
CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:050. Application for license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)
STATUTORY AUTHORITY: KRS ***165A.340(6), 165A.400, 165A.465(3), 165A.475, 165A.510[165A.340(3), 165A.460-165A.515]***
NECESSITY, FUNCTION, AND CONFORMITY: KRS ***165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.465, 165A.475, and 165A.510 require the commission to promulgate administrative regulations establishing standards and an application procedure for commercial driver license training schools[165A.460-165A.515 requires that the Kentucky Commission on]***[State Board for]***[Proprietary Education establish an application procedure for commercial driver license training schools]***. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner shall:

(a) Complete and submit to the commission[~~board~~] Form PE 30, Application for Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school residing in and doing business in Kentucky of $500[~~initial licensure fee of $100~~];

(d) Pay the nonrefundable contribution to the Student Protection Fund of $500[~~$300~~]; and

(e) Meet the requirements of Section 4[~~3~~] of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for Non-Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner shall:

(a) Complete and submit to the commission[~~board~~] Form PE 31, Application for Non-Resident Commercial Driver License Training School with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school not residing in and doing business in Kentucky of $1,250[~~initial licensure fee of $700~~];

(d) Pay the nonrefundable contribution to the Student Protection Fund of $1,250[~~$900~~]; and

(e) Meet the requirements of Section 4[~~3~~] of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. Annual Renewal License Fee for Commercial Driver License Training Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be $500.

(b) If the school's gross revenue exceeds $50,000, the annual renewal license fee for a commercial driver license training school residing in and doing business in Kentucky shall be $500 plus twenty-five (25) dollars for each additional $10,000 of gross revenue in excess of $50,000, not to exceed $3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a commercial driver license training school not residing in Kentucky, but doing business in Kentucky, shall be $1,250.

(b) If the school's gross revenue exceeds $50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be $1,250 plus twenty-five (25) dollars for each additional $10,000 of gross revenue ***earned from Kentucky resident students[~~for Kentucky residents~~]*** in excess of $50,000, not to exceed $3,000.

Section 4. ***(1)*** Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by***[~~: (1)~~]*** verification of liability insurance coverage for the commercial driver license training school from a Kentucky-licensed insurance carrier, as mandated by KRS 165A.475(1)(d)***.[~~;~~]***

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission[~~board~~] in writing within thirty (30) days of the subsequent change.

Section 5.[~~4.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 30 "Application for Resident Commercial Driver License Training School", 2013[~~October 2010~~] edition; and

(b) Form PE 31 "Application for Non-resident Commercial Driver License Training School", 2013[~~October 2010~~] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on[~~State Board for~~] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, ***165A.460-165A.515[~~165A.485, 165A.510~~]***, 49 C.F.R. 325

STATUTORY AUTHORITY: KRS 165A.340***(6), 165A.400, 165A.485[~~(3)~~]***

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A.*** KRS 165A.485 requires that the Kentucky Commission on[~~State Board for~~] Proprietary Education establish***[~~an~~]*** application ***forms*** for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed Kentucky resident commercial driver license training school shall:

(a) Complete and submit to the commission[~~board~~] Form PE 32, Renewal Application to Operate a Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee ***required by 791 KAR 1:050, Section 3[~~of:~~***

[~~1. $500~~][~~$300~~]***[~~for licensed commercial driver license training schools for net tuition income up to and including $50,000; and~~***

[~~2. An additional twenty-five (25)~~][~~fifteen (15)~~]***[~~dollars for each $10,000 in net tuition thereafter, not to exceed a total renewal fee of $3,000~~]***[~~$2,000~~]; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order payable to the "Kentucky State Treasurer".

Section 2. Renewal Application for Non-Kentucky Resident Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed non-Kentucky resident commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) Complete and submit to the commission[~~board~~] Form PE 33, Renewal Application to Operate a Non-Resident Commercial Driver License Training School, with supporting documentation

as listed on the form;

(b) Pay the nonrefundable renewal application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee ***required by 791 KAR 1:050, Section 3[~~of:~~***

~~1. $1,250 for licensed commercial driver license training schools for net tuition income up to and including $50,000; and~~

~~2. An additional twenty-five (25) dollars for each $10,000 in net tuition thereafter, not to exceed a total renewal fee of $3,000~~][~~$900~~]; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order made payable to the "Kentucky State Treasurer".

Section 3. Evidence of Liability Insurance Coverage. ***(1)*** Each renewal application to operate a commercial driver license training school shall be accompanied by***[~~: (1)~~]*** verification of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, as mandated by KRS 165A.475(1)(d)***.[~~or~~]***

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission[~~board~~] in writing within thirty (30) days of the subsequent change.

Section 4. Denial of Renewal Application. (1) The commission[~~board~~] shall deny a renewal application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with ***791 KAR 1:040 to 791 KAR 1:160,[~~the administrative regulations~~]*** governing the application and operation of a commercial driver license training school;

(c) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity with commercial driver license training schools***; or[~~.~~]***

(d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. 325, as enforced by the Kentucky State Police.

(2) The commission[~~board~~] may deny a renewal application to operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", 2013[~~October 2010~~] edition; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident Commercial Driver License Training School", 2013[~~October 2010~~] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on[~~State Board for~~] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(As Amended at ARRS, September 12, 2014)

791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.

RELATES TO: KRS 165A.310, 165A.330(1), 165A.350, 165A.370, 165A.380, 165A.460, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485, 332.095

STATUTORY AUTHORITY: KRS 165A.340***[~~(3)~~]***, (6), (10), 165A.400, 165A.465, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340***[~~(3),~~]***(6)***[~~,~~]*** and (10), 165A.400, 165A.465, and 165A.510 require[~~165A.460-515 requires that~~] the Kentucky Commission on[~~State Board for~~] Proprietary Education to ***promulgate administrative regulations for the administration[~~administer and enforce the provisions~~]*** of KRS Chapter 165A ***and to[~~, promulgate administrative regulations, and~~]*** establish standards for instructors and agents of commercial driver licensing schools***,*** including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents***,*** including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial drivers license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools[~~, June 2010 edition,~~] and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. An applicant for a Commercial Driver License Training School Skills Instructor[~~or Agent~~] license shall:

(1)[~~(a)~~] Complete and submit Form PE 34, Application for[~~a~~] Commercial Driver License Training School[~~Skills~~] Instructor;[~~or~~

~~(b) Complete and submit Form PE 36, Application for Licensure as a Commercial Driver License Training School Agent;~~]

(2) Submit two (2) recent passport-size photographs[~~no larger than 2 in. x 2 in.~~];

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of $200***[~~established in KRS 165A.475(2)~~]***[~~$150~~];

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of verifiable[~~veritable~~] commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police as required by 502 KAR 10:030 and 10:035.

Section 3.[~~State and National Criminal History Background Checks. An applicant for a commercial driver license instructor or agent shall undergo a state and national criminal history background check upon application and shall submit to being fingerprinted by the Kentucky State Police as required by KRS 165A.465.~~

~~Section 4.~~] Application for Renewal of Commercial Driver License Training School Instructor[~~or Agent~~]. On or before May 15 of each year, a licensed commercial driver license training school instructor[~~or agent~~], or a licensed commercial driver license training school on behalf of the skills instructor[~~or agent~~], shall:

(1)[~~(a)~~] Complete and submit Form PE 35 Renewal Application for[~~a~~] Commercial Driver License Training School[~~Skills~~] Instructor;[~~or~~

~~(b) complete and submit Form PE 37 Renewal Application for a Commercial Driver License Training School Agent;~~]

(2) Submit two (2) recent passport-size photographs;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and

(4) Pay the nonrefundable renewal fee of $200***[established in KRS 165A.475(2)]***[~~$150~~].

Section 4.[~~5.~~] Classroom Instructors. The CDL school shall submit a Form PE 11, Form for Instructional Staff and Key Administrative Personnel***, incorporated by reference in 791 KAR 1:010,*** to the commission[~~board~~] upon qualifying an individual as a classroom instructor.

Section 5.[~~6.~~] Temporary License for CDL[~~School Agent or~~] Skills Instructor. (1) The commission[~~board~~] shall issue to an applicant[~~,~~] who has completed the requirements of Sections 2 and 3 of this administrative regulation[~~,~~] a temporary permit, by way of letter, for the performance of skills instructor[~~or agency~~] duties while the license application is being processed.

(2) The commission[~~board~~] shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.

(a) The commission[~~board~~] shall provide this letter within ten (10)[~~three (3)~~] business days of receipt of a properly completed application.

(b) This letter shall serve as the applicant's temporary license until a regular license is issued.

(c) A copy of the commission's[~~board's~~] letter shall be maintained by the applicant and be available for review upon request by the commission's[~~board's~~] inspector or the Kentucky State Police.

(d) If the applicant is denied a license, the commission[~~board~~] shall issue a notice to the applicant and the applicant's school rescinding the applicant's temporary license for a skills instructor[~~or agent~~].

Section 6.[~~7. All fees required by this administrative regulation shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."~~

~~Section 8.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools***", June[,"]*** 2014 edition;

(b) Form PE 34, "Application for Commercial Driver License Training School Instructor",***[October]*** 2013[~~2010~~] edition; and

(c)[(~~b~~)] Form PE 35, "Renewal Application for Commercial Driver License Training School Instructor",***[October]*** 2013[~~2010~~] edition[~~;~~

~~(c) Form PE 36, "Application for Commercial Driver License Training School Agent", October 2010; and~~

~~(d) Form PE 37, "Renewal Application for Commercial Driver License Training School Agent", October 2010 edition~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on [~~State Board for~~] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 12, 2014)

804 KAR 4:230. Extended hours supplemental licenses.

RELATES TO: KRS 243.030***(16), 243.042[(31)]***, 243.050***, 243.082***

STATUTORY AUTHORITY: KRS 241.060***, 243.050***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.050[~~(5)~~] establishes the extended hours supplemental license[~~a new class of supplemental liquor licenses~~] and authorizes the board by administrative regulation to set the necessary conditions and restrictions upon this class of license. This administrative regulation establishes the conditions and restrictions for extended hours supplemental licenses.

Section 1. Definition. "Prevailing time" means those opening and closing hours applicable to the standard retail license or licenses held by the facility making application for the Extended Hours Supplemental License.

Section 2. This administrative regulation establishes an Extended Hours Supplemental License for the retail sale of alcoholic beverages, distilled spirits, wine, and malt beverages by the drink.[~~This license is divided into four (4) categories:~~] (1) A convention center holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.[~~The Convention Center Extended Hours Supplemental License;~~]

(2) A horse racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.[~~The Horse Race Track Extended Hours Supplemental License;~~]

(3) An automobile racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.[~~The Commercial Airport Extended Hours Supplemental License; and~~]

(4) A railroad system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.

(5) A state park holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.

(6) A commercial airlines system or charter flight system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.

(7) A licensee holding a retail drink license pursuant to KRS Chapter 243 located within a commercial airport shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.

(8) A qualified historical site licensee holding an extended hours supplemental license shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.[~~The Automobile Race Track Extended Hours Supplemental License.~~]

Section 3. The supplemental licenses may be issued by the distilled spirits administrator and malt beverage administrator who, pursuant to KRS 243.050[~~(5)~~], shall consider whether or not the issuance of the license is in the best interest of promoting tourism, conventions, or the economic development of Kentucky or any part thereof.[~~Section 4. (1) The Convention Center Extended Hours Supplemental License may be issued to any facility which holds a convention center or convention hotel complex license pursuant to KRS 243.050(4). The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.~~

~~(2) The Horse Race Track Extended Hours Supplemental License may be issued to any horse race track licensed to conduct a race meeting under KRS Chapter 230 and which is the holder of a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m.~~

~~until prevailing time for weekday closing.~~

~~(3) The Commercial Airport Extended Hours Supplemental License may be issued to any commercial airport through which 500,000 or more passengers arrive or depart annually and which holds a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be Monday through Saturday, prevailing opening time until 4 a.m., and Sundays, 1 p.m. until 4 a.m.~~

~~(4) The Automobile Race Track Extended Hours Supplemental License may be issued to any facility which holds an automobile race track license pursuant to the provisions of KRS 243.050(5) and has a seating capacity of at least 30,000 people. The hours of operation under this license shall be prevailing time for Monday through Saturday and Sunday 1 p.m. until prevailing time for weekday closing.~~

~~Section 5. An Extended Hours Supplemental License shall not be issued to any applicant that does not hold one (1) or more licenses authorizing the retail sale of distilled spirits and wine by the drink.~~

~~Section 6. Only one (1) Extended Hours Supplemental License shall be required for each licensed premises.~~

~~Section 7. The annual fee for the Extended Hours Supplemental License appears in KRS 243.030 (30) and shall be in addition to all other licenses and license fees due by the holder in connection with the retailing of alcoholic beverages.~~

~~Section 8. The holder of an Extended Hours Supplemental License may be required, from time to time, to furnish the administrators information as requested indicating continued qualification to hold the Extended Hours Supplemental License.~~

~~Section 9. Each applicant for an extended hours supplemental license shall complete and submit to the Office of Alcoholic Beverage Control the "ABC Basic" application incorporated by reference in 804 KAR 4:400 and the "Schedule 'X' Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License" form as set forth in 804 KAR 4:410.~~]

FREDERICK A. HIGDON, Chairman
LARRY R. BOND, Acting Secretary
APPROVED BY AGENCY: July 10, 2014
FILED WITH LRC: July 15, 2014 at 9 a.m.
CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 12, 2014)

804 KAR 4:400. ABC basic application and renewal form incorporated by reference.

RELATES TO: KRS 164.772, 241.060(1), 243.090, 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. This administrative regulation prescribes the basic forms to be used to apply for and renew an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:
(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license;
(2) A temporary license; or
(3) An extended hours, supplemental bar, special Sunday, or sampling license.

Section 2. In addition to the Basic Application for Alcoholic Beverage License required by Section 1 of this administrative regulation, an applicant shall complete and submit to the Department of Alcoholic Beverage Control the special application form required by 804 KAR 4:410 if applicable.

Section 3. A licensee who is renewing a license pursuant to KRS 243.090 shall complete and submit to the Department of Alcoholic Beverage Control the Application for License Renewal.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Basic Application for Alcoholic Beverage License", ***September[July]*** 2014[~~November 2013~~]; and
(b) "Application for License Renewal", February 2014.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, http://www.abc.ky.gov/.

FREDERICK A. HIGDON, Chairman
LARRY R. BOND, Acting Secretary
APPROVED BY AGENCY: July 10, 2014
FILED WITH LRC: July 15, 2014 at 9 a.m.
CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 12, 2014)

804 KAR 4:410. Special applications and registration forms incorporated by reference.

RELATES TO: KRS 241.060(1)
STATUTORY AUTHORITY: KRS 241.060***(1)***, 243.380, 243.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

Section 1. Special application forms. An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department of Alcoholic Beverage Control the applicable special application form for the specific license type for which the application is made. The special application forms are listed below:
(1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application;
(2) Special Temporary License Application;[~~or~~]
(3) Supplemental License Application; or
(4) Distiller's License: Change of License Application.

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:
(1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue; ***or***
(2) ***Product Registration Online to be completed electronically at:***

(a) https://www.productregistrationonline.com/GetStarted/Ky#selectPermit;
(b) https://www.productregistrationonline.com/distributor/login; or
(c) https://www.productregistrationonline.com/producer/login[~~ABC Form 714 to be submitted to the Department of Alcoholic Beverage Control; or~~
~~(3) ABC Form 715 to be submitted to the Department of Alcoholic Beverage Control~~].

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", ***September[~~July~~]*** 2014[~~December, 2013~~];
(b) "Special Temporary License Application", ***September[~~July~~]*** 2014[~~December, 2013~~];
(c) "Supplemental License Application", July 2014[~~December, 2013~~];
(d) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2013;
(e) "***Product Registration Online", September 2014; and[~~ABC Form 714", July 2014~~]***[June 2013]***[;]***[and]
(f) ***[~~"ABC Form 715", July 2014~~]***[June 2013]***[; and***
~~(g)~~] "Distiller's License: Change of License Application", July 2014.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, http://www.abc.ky.gov.

FREDERICK A. HIGDON, Commissioner
LARRY R. BOND, Acting Secretary
APPROVED BY AGENCY: July 10, 2014
FILED WITH LRC: July 15, 2014 at 9 a.m.
CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 12, 2014)

804 KAR 14:010. Malt beverage and wine for personal use.

RELATES TO: KRS 241.060***, 26 U.S.C. 5042, 5053, 27 C.F.R. 24.75***
STATUTORY AUTHORITY: KRS 241.060***(1), 26 U.S.C. 5042, 5053, 27 C.F.R. 24.75***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060***(1)*** authorizes the Alcoholic Beverage Control Board to regulate the use and manufacture of alcoholic beverages. This administrative regulation allows individuals to produce malt beverages and wine for personal use.

Section 1. (1) A person twenty-one (21) years of age or older may produce malt beverages for personal or family use.
(2) Malt beverage produced for personal use shall not be sold.
(3) Malt beverage produced for personal use shall not be given to any public facility to give or sell to patrons.
(4) The aggregate amount of malt beverage produced for personal use shall not exceed:
(a) 100 gallons per calendar year if there is only one (1) adult who is legally allowed to consume alcoholic beverages in the household; or
(b) 200 gallons per calendar year if there are two (2) or more adults who are legally permitted to consume alcoholic beverages in the household.

Section 2. (1) A person twenty-one (21) years of age or older may produce wine for personal use.
(2) Wine produced for personal use shall not be sold.
(3) Wine produced for personal use shall not be given to any public facility to give or sell to patrons.
(4) The aggregate amount of wine produced for personal or family use shall not exceed:
(a) 100 gallons per calendar year if there is only one (1) adult who is legally allowed to consume alcoholic beverages in the household; or
(b) 200 gallons per calendar year if there are two (2) or more adults who are legally permitted to consume alcoholic beverages in the household.

Section 3. Malt beverages and wine produced for household consumption may be entered into competitions at regularly organized fairs for prizes. (1) Competitions may be held at a licensed or unlicensed premise.
(2) Malt beverages and wine produced for household consumption may be transported or mailed from the producer's home to the site of the competition or to the competition's designee.
(3) Judges of the competition shall be at least twenty-one (21) years of age, and may only consume for judging purposes.
(4) Malt beverages or wine entered into a competition shall not be sold to, sampled by, or tasted by the general public.

FREDERICK A. HIGDON, Chairman
LARRY BOND, Acting Secretary
APPROVED BY AGENCY: July 10, 2014
FILED WITH LRC: July 15, 2014 at 9 a.m.
CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 12, 2014)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, **61.931-934,** 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, **278.410,** 322.340, 365.015, 369.102, 424.300, **45 C.F.R. 160.103,** 47 C.F.R. 36**, 20 U.S.C. 1232g**
STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310
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 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions. (1) "Affiliate" means 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.
(2) "Case" means a matter coming formally before the commission.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:
(a) Directly or indirectly has the power to direct, or to cause the

direction of, the management or policies of another entity; and

(b) Exercises that power:

1. **Alone or** through one (1) or more intermediary companies**[, or alone]**;

2. In conjunction with, or pursuant to an agreement;

3. Through ownership of ten (10) percent or more of the voting securities;

4. Through common directors, officers, stockholders, voting or holding trusts, **or** associated companies;

5. By contract; or

6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.

(6) "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.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "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.

(9) "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.

(10) "Party" means a 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 20 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

(12)[~~"Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).~~

~~(13)~~] "Signature" means a manual, facsimile, conformed, or electronic signatures.

(13)[~~(14)~~] "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(14)[~~(15)~~] "Utility" is defined by KRS 278.010(3).

(15)[~~(16)~~] "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

(16)[~~(17)~~] "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director. (1) Upon request, the executive director shall:

(a) Advise as to the form of a paper 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, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(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 each subsequent paper filed in the case.

(3) Signing of papers.

(a) A paper 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 submitting party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper 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) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, 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 a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a 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 a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, 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 that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party **by the commission** shall be made by **sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.**

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;**[~~or~~]**

2. **Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or**

3.[~~Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or~~

~~3.~~] Sending a copy by electronic **mail[~~means~~]** to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic **mail[~~means~~]** shall comply with Section 8(4) of this administrative regulation**[~~and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site~~]**.

(e)[~~(c) If good cause exists to excuse the party from receiving a copy by electronic means, service of papers on the party shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.~~

~~(d)~~] 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.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until **the paper:**

1.[~~it~~] Is physically received by the executive director at the commission's offices during the commission's official business hours**; and**

2.[~~and the paper~~] Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a **person[~~party~~]** files a paper containing personal information, the **person[~~party~~]** shall encrypt or redact the paper so that personal information cannot be read. Personal information **shall include *a business name;*[~~includes~~]** an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements[~~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 a[~~the~~] Social Security number or taxpayer identification number;

2. The month and date[~~day~~] of an individual's birth;[~~and~~]

3. The digits of an[~~the financial~~] account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government;**[~~or~~]**

6. **"**Individually identifiable health information**"** as defined **by[~~in~~]** 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g**; or**

7. *The address, phone number, or email address of an individual who is not a party and has not requested to be a party[~~Other individually identifiable contact information~~]*.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark**[~~,~~]** that so obscures the identifiers that **the identifiers[~~they~~]** cannot be read.

(c)**[~~Each party shall~~]**[~~The executive director shall not~~]**[~~be required to review a paper~~]**[~~papers~~]**[~~for compliance with this section.~~]** The responsibility to **review for compliance with this section and** redact a paper[~~document~~] shall rest with the party that files the paper[~~document~~].

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case 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.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her 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 in the case, a party shall serve a person granted leave to intervene with all papers that the party submits in the case after the order granting intervention, but **the party** is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case.

1. These comments shall be filed in the case record.

2. 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.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if **the party[~~it~~]** obtains information **that[~~which~~]** indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for **the[~~its~~]** failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;

2. The reasons why it is relevant to the issues in the case; and

3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated **if[~~where~~]** rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

Section 5. Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request 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 a 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 a 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 in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Proof of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A paper 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 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 established 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 Use of Electronic Filing Procedures form; and

(b) If **the applicant[~~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 shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2. of this section.

(4)(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)(a) Each electronic submission 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 material to be filed in paper or physical medium but not included in the electronic submission; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material 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.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a)**[~~or (b)~~]** of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at http://psc.ky.gov to view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, **the party[it]** shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, 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 the party's intervention a written statement that[~~:~~

~~1. The party waives any right to service of commission orders by United States mail; and~~

~~2.~~] the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, 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. The party waives any right to service of commission orders by United States mail; and~~

~~2.~~] the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address[~~in accordance with Section 4(8) of this administrative regulation~~].

(12)(a) A paper 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 established in this administrative regulation and any order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as **established[~~expressly provided~~]** in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint**[~~to the commission's satisfaction~~]**; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time **and** not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

(a) The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

(b) The commission may**[~~also~~]**, through its own experts**, [~~or~~]**employees, or otherwise, obtain evidence the commission finds necessary or desirable in a 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 of a party, may convene a conference 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 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 a case may agree among themselves or with commission staff 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 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 a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director 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. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written 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 **relevant** portions**[~~of the same as may be relevant~~]**, or may require evidence to be entered as a part of the record.

(2)**(a)** If relevant and material matter offered in evidence by any party is **part of[~~embraced in~~]** a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) If 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)**(a)** The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) 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.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) **Unless so ordered by the commission[~~Except as expressly permitted in particular instances~~]**, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding**, or upon the commission's own motion**, the record of a case in the commission's files or any document on file with the commission may be made a part of the record***[~~, A record of the type established in this subsection shall be~~]*** by "reference only."

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

***(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.*[~~(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.~~**

[~~(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.~~]

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had $5,000,000 or more in gross annual revenue in the immediate past calendar year, 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; or

(b) For a utility that had less than $5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) **The** amount and kinds of stock authorized;

(b) **The** amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) A 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 sinking fund provisions, if applicable;

(e) **The** amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the 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;

(f) 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;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a 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;

(h) **The** 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

(i) A 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 material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878 ***for classification of*[~~, upon which the commission should classify~~]** that material as confidential;

2. States the time period ***for*[~~in which~~]** the material ***to*[~~should~~]** be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies of the material in paper medium with those portions **redacted[~~obscured~~]** for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions **that[~~which~~]** unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements **established[~~enumerated~~]** in KRS 61.878 and to demonstrate the time period for***[~~which~~]*** the material ***to*[~~should~~]** be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after **the motion[~~it~~]** is filed with the commission.

(e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an **unredacted[~~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 case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds ***pursuant to KRS 61.878 for classification of that[~~upon which the~~]*** material[***~~should be classified~~]*** as confidential;

2. States the time period ***for[~~in which~~]*** the material ***to[~~should~~]*** be treated as confidential and the reasons for this time period; and

3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions **that[~~which~~]** unless redacted would disclose confidential material.

a. Text pages or portions thereof **that[~~which~~]** do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for ***[~~which~~]***the material ***to[~~should~~]*** be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for ***[~~which~~]***the material ***to[~~should~~]*** be considered as confidential and shall advise the requestor of **the[~~his or her~~]** determination by letter.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. The commission shall establish a case and shall review the application without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.

2. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following **the[~~his or her~~]** decision.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the motion 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.

(6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant 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) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A 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 established 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. (a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) 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. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that 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 treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. 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 person who sought confidential protection shall inform the commission in writing if 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 person who sought confidential protection, giving ten (10) days to respond. If 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 **that party[~~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.

1. If the party[~~If he~~] is unable to make the demonstration, the commission shall make the requested materials available for public inspection**; or**

2. *If the party is unable to make the demonstration,*[~~. 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 an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications. (1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, 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 **the information[~~same~~]**.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state **if[~~whether~~]** it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state **if[~~whether~~]** it is authorized to transact business in Kentucky.

(4) 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).

(a) 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 a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation;

2. The name of the governmental agency offering the franchise;

3. The type of franchise offered; and

4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application 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 with its application:

(a) The facts relied upon to show that the proposed construction or extension 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 construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner **of the construction[~~in which same will be constructed,~~]** and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and

2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(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, 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 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. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing Rates. (1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period that 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. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice[~~; and~~

~~6. If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body~~].

(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon 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 that may be used to obtain a copy from the

applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application 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 proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the written 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 written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written 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 written communication from the independent auditor to the utility, if applicable, 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 ***FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2[~~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 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**:**

1. Each software, program, or model;

2. What the software, program, or model was used for;

3.[~~identify~~] The supplier of each software, program, or model;

4. A brief description of the software, program, or model; and

5. 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) **The** 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 amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the 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 47 C.F.R. Part 36; 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.

(5) 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 each application 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 and the 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 differences, if applicable, 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.

(6) 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.

(7) Each application 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 written 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 written 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 differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that 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 that 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. Sales volume forecasts **in**[**–**]cubic feet (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of other information provided, if applicable;

(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 ***FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2[~~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 that 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 shall 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**:**

1. Each software, program, or model;

2. What the software, program, or model was used for;

3.[~~identify~~] The supplier of each software, program, or model;

4. A brief description of the software, program, or model; **and**

5. The specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid 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, or water utility service and has annual gross revenues greater than $5,000,000 in the division for which a rate adjustment is sought, 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 47 C.F.R. Part 36; 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.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that 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.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. **Upon[~~When~~]** filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers[~~or is a sewage utility~~], the utility shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers[~~and is not a sewage utility~~], it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing 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 no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(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) Proof of Notice. A utility shall file with the commission no

later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

(5) 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 that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) 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;

(c) The amount and kinds of stock, if any, which the applicant 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 applicant desires to issue, with terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of 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;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established 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. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement 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 application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(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 applicable, unless they have already been filed with the commission, in which case reference shall be made by 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 commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an 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; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) **Unless the commission orders otherwise,** responses, if applicable, 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 and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a

declaratory order solely on the basis of the written submissions filed.

(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, and may extend the time for the filing of a reply or response under this section.

Section 20. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and 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 omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. **Upon the filing of an**[~~When the complainant files his or her~~] original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of 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 require the answer to be filed within a shorter ***[or longer]***period ***if the complaint involves an emergency situation or otherwise would be detrimental to the public interest***.

(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 that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) 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 matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, **the defendant**[~~it~~] may so state in the answer and place the denial upon that ground.

Section 21. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a 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.

(a) 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 ***if the complaint involves an emergency situation or otherwise would be detrimental to the public interest***[~~as commission staff may require~~].

(b) 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 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

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

(a) "FERC ***Financial Report FERC Form No. 1"***[~~Form-1", Annual Report of Major Electric Utilities, Licensees and Others~~], March 2007;

(b) "FERC ***Financial Report FERC Form No. 2"***[~~Form-2", Annual Report of Major Natural Gas Companies~~], December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014[~~July 2012~~];

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(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.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director

Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 12, 2014)

807 KAR 5:011. Tariffs.

RELATES TO: KRS ***65.810, Chapter 74,*** 278.010, 278.030, 278.160, 278.170, 278.180,[~~278.185,~~] 278.190***, 369.102***

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to 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) "Electronic signature" is defined by KRS 369.102(8).

(4) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:

(a) Is due to a specific request for a service activity for which, once the activity is completed, additional charges are not incurred; and

(b) Is limited to recovery of an amount no greater than the cost of the specific service.

(5) "Person" is defined by KRS 278.010(2).

(6) "Rate" is defined by KRS 278.010(12).

(7)[~~"Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).~~

~~(8)~~] "Signature" means any manual, facsimile, conformed, or electronic signatures.

(8)[~~(9)~~] "Statutory notice" means notice made in accordance with KRS 278.180.

(9)[~~(10)~~] "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(10)[~~(11)~~] "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.

(11)[~~(12)~~] "Utility" is defined by KRS 278.010(3).

(12)[~~(13)~~] "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.

(13)[~~(14)~~] "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(14)[~~(15)~~] "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General. (1) 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 the utility's current tariff for public inspection in the utility's office or place of business.

(5) A utility that maintains a Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or

(b) Place on that Web site a hyperlink to the location on 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, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of the utility's 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 the 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 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 the commission's 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, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use 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, if applicable, under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classification of customers affected;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the minimum 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 a tariff provision or a contract will be effective for a limited period, state the term; and

(g) Special rules: list special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification of service available pursuant to 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 a designation indicating the type or classification of service for which the rate schedule is available. (Example: Tariff R.S. for 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) With the exception of supporting documents, which may be submitted in an Excel spreadsheet in.xls format, each document shall be submitted in portable document format ("PDF") capable of

being viewed 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 established in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) A tariff, tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as established by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect by:

(a) Order of the commission; or

(b) 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) The following symbols shall be placed in the margin to indicate a change:

(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 establishing:

(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. Notice. A utility shall provide notice if a charge, fee, condition of service, or 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 notice no later than the date the tariff filing is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the tariff filing is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers[~~or is a sewage utility~~], it shall mail a written notice to each customer no later than the date the tariff filing is submitted to the commission.

(b) If a utility has more than twenty (20) customers[~~and is not a sewage utility~~], it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission;

3. Publishing 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 no later than the date the tariff filing is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the tariff filing is submitted to the commission.

(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 established in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this tariff filing at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this tariff filing at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding this tariff filing may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing.

(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) The proposed rates on 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 provided to the public in accordance with Section 8 of this administrative regulation;

(b) Statutory notice was provided; and

(c) The commission does not suspend the proposed rates pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission ***with***[~~***at the time of***~~] the filing of the proposed rate. If a substantial omission occurs, which is prejudicial to full consideration by the commission or to the public, the statutory notice period to the commission shall not commence until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. A utility may revise a nonrecurring charge***. The revision shall be performed*** pursuant to this section and Sections 6 and 9 of this administrative regulation. (1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge shall be accompanied by:

(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge;

(b) A copy of the public notice of each requested nonrecurring charge and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions until the next general rate case;

(d) A statement identifying each classification 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[~~; and~~

~~(f) If the applicant is a water district and proposes to increase any of its nonrecurring charges or implement a new nonrecurring charge, a statement from an authorized official of the district indicating the date the proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers reside and the date it presented testimony, or is scheduled to present testimony, to that governing body~~].

(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 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 period of twelve (12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing, the utility shall, in addition to the information established 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 method) to a level greater than that allowed in the most recent general rate case.

(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.

(4) Upon a utility submitting the tariff filing to the commission, the utility shall transmit by electronic mail a 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 as its own the predecessor'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 place into effect in lieu thereof, in the form established 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 establishes the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility; or

(b) New or revised tariff sheets that establish the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)(a) If a new tariff or a revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing.

(b) If a new tariff or a revised sheet of an existing tariff changes or amends the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8 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 establishing 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 KRS Chapter 278; and

(d) A copy of 807 KAR Chapter 5.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. Requests for confidential treatment shall be made and reviewed in accordance with 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tariff Form-1", July 2013;

(b) "Tariff Form-2", July 2013; and

(c) "Tariff Form-3", Adoption Notice, July 2013.

(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.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 12, 2014)

807 KAR 5:069. Filing requirements and procedures for *a* federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.

RELATES TO: KRS ***65.810, Chapter 74, 273, 278.010(15),*** 278.020(1), 278.023, 278.190, 278.300

STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the issuance or assumption of an obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 requires that the commission review, recommend modifications to, and issue orders necessary to implement an agreement regarding a ***federally funded[federally-funded]*** construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) requires the commission to prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Construction project" means activity involving the construction or installation of facilities, plant, or equipment to provide, extend, or enhance the quality of water or sewer service within the geographical area that a water utility has the responsibility to serve.

(3) "Federal lending agency" means the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

(4) "Water utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply or the collection or treatment of sewage for the public;

(b) A water district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74; or

(c) A combined water, gas, or sewer district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. Filing Requirements. A water utility proposing a construction project financed in whole or in part under the terms of an agreement between the water utility and a federal lending agency shall file with the commission:

(1) All documents and information required by 807 KAR 5:001, ***Sections[Section]*** 7, 8, and 14;

(2) A copy of the documents from the federal lending agency stating approval of the project and including all terms and conditions of the agreement, including all amendments;

(3) A copy of the letter of concurrence in contract award;

(4) A copy of the preliminary and final engineering reports and bid tabulations;

(5) One (1) copy of each set of plans and specifications on electronic storage medium in portable document format;

(6) A certified statement from an authorized water utility official confirming:

(a) That the proposed plans and specifications for the construction project have been designed to meet the minimum construction and operating requirements established in:

1. If the construction project involves facilities to treat or distribute water, 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1) and Section 10; or

2. If the construction project involves facilities to collect or treat sewage, 807 KAR 5:071, Section 5 and Sections 7(1) through (3);

(b) That all other state approvals or permits have been obtained;

(c) That the proposed rates, if any, shall produce the total revenue requirements recommended in the engineering reports; and

(d) The dates upon which construction will begin and end;

(7) If applicable, a statement that notice meeting the requirements of Section 3 of this administrative regulation has been given, together with a copy of the notice; and

(8) If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required by subsection (6)(a) of this section, together with supporting evidence to identify and explain the reasons that the minimum requirements cannot be met[~~; and~~

~~(9) If a water district or combined water, gas, or sewer district proposes to increase any current rate for water or sewer service or implement a new rate for water or sewer service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body~~].

Section 3. Notice. Upon filing for a change in rates as a result of a construction project, a water utility shall provide notice as established in this section. (1) Public postings.

(a) A water utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A water utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this

subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer notice.

(a) If a water utility has twenty (20) or fewer customers[~~or is proposing to increase its rates for sewer service~~], it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a water utility has more than twenty (20) customers[~~and is not proposing to increase its rates for sewer service~~], it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice in a prominent manner in a newspaper of general circulation in the water utility's service area no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A water utility that provides service in more than one (1) county and is not proposing to increase its rates for sewer service may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of notice. A water utility shall file with the commission no later than fifteen (15) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the water utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a water utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the water utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice content. Each notice issued in accordance with this section shall contain a brief description of the construction project and shall also contain:

(a) The proposed effective date of the proposed rate adjustment;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (water utility name) located at (water utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

(h) A statement that the proposed rates are required under the terms of an agreement between (water utility name) and (federal lending agency name) and that KRS 278.023 does not grant the Public Service Commission any discretionary authority to modify or reject any portion of the agreement between (federal lending agency) and (water utility name), or to defer the issuance of all necessary orders to implement the terms of that agreement.

Section 4. Additional Construction Activity. If surplus project funds remain after the approved construction project has been completed, the water utility may construct additional facilities without prior commission approval if no change in existing rates will result. The water utility shall notify the commission in writing of additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the water utility to use the remaining project funds in the manner proposed.

Section 5. System Maps and Records. Within thirty (30) days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Kentucky State Board on Electric Generation and Transmission Siting
(As Amended at ARRS, September 12, 2014)

807 KAR 5:110. Board proceedings.

RELATES TO: KRS 61.870-61.844, 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716

STATUTORY AUTHORITY: KRS 278.702(3), 278.706(2)(c), 278.712(2)

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702(3) authorizes the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication shall be addressed to Kentucky State Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615.

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) 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.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant, or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of the Notice of Intent to File Application, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address,[~~and~~] telephone number, and electronic mail address of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. If the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to if a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine if the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary shall reject for filing any document that does not comply with an administrative regulation in 807 KAR Chapter 5.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

Section 5. Confidential Material. (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential ***pursuant to subsection (2) of this section***.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the executive director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, establish each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material that identifies, by underscoring, highlighting with transparent ink, or other comparable method, only the portion alleged to be confidential. A text page or portion thereof that does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884, shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in a proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or another party to the proceeding.

1. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, the party shall follow the procedure for determining confidentiality established in subsection (2) of this section.

2. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding.

1. The petition shall include a description of any effort made to enter into a protective agreement.

2. Unwillingness to enter into a protective agreement shall be fully explained.

3.a. A party may respond to the petition.

b. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

4. The board shall determine if the petitioner is entitled to the material***[,]*** and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure established in this section, shall obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing. If confidential material is considered during a formal hearing, it shall be considered as established in the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person 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.

(9) Material granted confidentiality that later becomes publicly available or otherwise shall no longer warrant confidential treatment.

(a) The petitioner who sought confidential protection shall

inform the executive director in writing if material granted confidentiality becomes publicly available.

(b)1. If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving the petitioner ten (10) days to respond.

2. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, the information shall not be ***[deemed 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 an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 6. Evidentiary Hearings. (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board shall schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. If applicable, a party of record shall file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local public hearing or local public information meeting may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least fourteen (14) days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge or executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least three (3) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least three (3) days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that the general public has been provided notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice ***a statement that[the following information]***:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant, or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 12, 2014)

807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines.

RELATES TO: KRS 278.020(2), (8)

STATUTORY AUTHORITY: KRS 278.040(3)

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 278.020(2) ***requires[provides that]*** a certificate of public convenience and necessity ***to[must]*** be obtained prior to construction of an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length. ***[KRS 278.020(8) includes "a person over whose property the proposed transmission line will cross" among those persons who are an "interested party" who may move to intervene in the proceeding.]***This administrative regulation establishes procedures and minimum filing requirements for an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

Section 1. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length, an applicant shall file with the commission a notice of intent to file application. If an

applicant fails to file an application within six (6) months of the filing of ***the[such a]*** notice, the notice shall automatically expire without further notice to the applicant.

(2) A notice of intent to file application shall include:

(a) The name, address,[and] telephone number, and electronic mail address of the utility that intends to file the application;

(b) A description of the proposed construction that will be the subject of the application; and

(c) The name of the county or counties in which the construction will be proposed.

Section 2. Application. To apply for a certificate of public convenience and necessity to construct an electric transmission line of 138 kilovolts or more and more than 5,280 feet, a utility shall file with the commission***[the following]***:

(1) All documents and information required by:

(a) 807 KAR 5:001, Section 14, except that the applicant shall file the original and six (6) copies of the application; and

(b) 807 KAR 5:001, Section 15(2)(a) through (c) and (e) through (f)[(g)];

(2) Three (3) maps of suitable scale, but no less than one (1) inch equals 1,000 feet for the project proposed.

(a) The map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation administrator's maps, modified as required.

(b) Sketches of proposed typical transmission line support structures shall also be provided.

(c) A separate map of the same scale shall show any alternative routes that were considered;

(3) A verified statement that, according to county property valuation administrator records, each property owner over whose property the transmission line right-of-way is proposed to cross has been sent by first-class mail, addressed to the property owner at the owner's address as indicated by the county property valuation administrator records, or hand delivered:

(a) Notice of the proposed construction;

(b) The commission docket number under which the application will be processed and a map showing the proposed route of the line;

(c) The address and telephone number of the executive director of the commission;

(d) A description of his or her rights to request a local public hearing and to request to intervene in the case; and

(e) A description of the project;

(4) A sample copy of each notice provided to a property owner***[, pursuant to the preceding paragraph,]*** and a list of the names and addresses of the property owners to whom the notice has been sent***;[.]***

(5) A statement that a notice of the intent to construct the proposed transmission line has been published in a newspaper of general circulation in the county or counties in which the construction is proposed, which notice included ***a***:

(a) ***[A]***Map showing the proposed route;

(b) ***[A]***Statement of the right to request a local public hearing; and

(c) ***[A]***Statement that interested persons have the right to request to intervene;

(6) A copy of the newspaper notice described in subsection 5 of this section; and

(7) A statement as to whether the project involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.

Section 3. Local Public Hearing. (1) Any interested person under KRS 278.020(8) may request that a local public hearing be held by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. This hearing shall be requested no later than thirty (30) days after filing of an application for a certificate of public convenience and necessity.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name, address, and telephone number of the person requesting the hearing; and

(c) A statement as to ***if[whether]*** the person requesting the hearing wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing as well, that person shall also apply to intervene in the commission proceeding on the application pursuant to 807 KAR 5:001, Section 4(11).

(4) At least five (5) days before the date established by the commission for a local public hearing, the applicant shall submit to the commission proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or counties in which the construction is proposed.

Section 4. Deviation from Rules. The provisions of 807 KAR 5:001, Section 22[21] apply to applications filed under this administrative regulation, except that the commission shall not permit a deviation from the requirements of this administrative regulation unless the commission finds that failure to permit the deviation will adversely affect utility rates or service.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, September 12, 2014)

900 KAR 6:070. Certificate of need considerations for formal review.

RELATES TO: KRS 216B.010, 216B.090[216B.040], 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. KRS 216B.040(2)(a)2 requires the cabinet to promulgate an administrative regulation establishing the criteria for issuance and denial of certificates of need. This administrative regulation establishes the requirements necessary for the consideration for formal review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[(5)].

(2) "Days" means calendar days, unless otherwise specified

(3) "Formal review" means the review of **an application[applications]** for certificate of need which **is[are]** reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which **is[are]** reviewed for compliance with the review criteria set forth at KRS 216B.040 and in this administrative regulation.

(4) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(5) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of **an application[applications]** under formal review shall

be limited to the **[~~following~~]** considerations **established in this section.[~~:~~]**

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(c) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision***[~~or decision following a court ruling~~]***.

(d) An application seeking to re-establish a licensed healthcare facility or service that was provided at the healthcare facility and which was voluntarily discontinued by the applicant shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent certificate of need approval; and

e. Did not occur less than twenty-four (24) months prior to the submission of the application to re-establish;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the **applicant has identified a need for the[~~applicant's~~]** [~~applicant has identified a need for the~~] proposal **in[~~for~~]**[~~in~~] the geographic service area defined in the application**; and[~~is consistent with criteria, inventories, and need analysis figures maintained by the cabinet and the State Health Plan, referenced in subsection (1) of this section, and the applicant has demonstrated that it is able to meet the need identified by the criteria, inventories, and need analysis maintained by the cabinet and the State Health Plan; or~~]**[~~,and~~]

(b**) [~~In the event the State Health Plan does not address the proposed health facility or service,~~]** If the applicant has**[~~identified a need for the proposal for the geographic service area defined in the application and has~~]** demonstrated that it is able to meet the need identified **in the geographic service area defined in the application**[~~in the geographic service area defined in the application~~].

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed**.**

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) The cabinet shall determine if the applicant:

1. Is prepared to, and capable of undertaking and carrying out, the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

2. Has the ability to comply with applicable licensure requirements.

(b) Absence of an applicable licensure category shall not constitute grounds for disapproving an application.

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 12, 2014)

902 KAR 30:001. Definitions for 902 KAR Chapter 30.

RELATES TO: KRS 200.650-200.676, 20 U.S.C. Chapter 33, 34 C.F.R. Part 303

STATUTORY AUTHORITY: KRS 194A.050, 200.660***(8)***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the definitions for 902 KAR Chapter 30 pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Ability to pay" means a family has an income at 200 percent of the poverty level or above.

(2) "Assessment" means the ongoing procedures used by appropriate qualified service providers throughout the child's period of eligibility in First Steps to identify:

(a) The child's unique strengths and needs***[,]*** and the services appropriate to meet those needs;

(b) The resources, priorities, and concerns of the family; and

(c) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability.

(3) "Assistive technology device" means any item, piece of equipment, or product system:

(a) Whether acquired commercially off the shelf, modified, or customized;

(b) That is used to:

1. Increase, maintain, or improve the functional capabilities of a child with a disability; and

2. Implement the individualized family service plan; and

(c) Except for a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g. mapping), maintenance, or replacement of that device.

(4) "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device in accordance with 20 U.S.C. 1401(2).

(5) "Cabinet-approved criterion referenced instrument" means any of the three (3) assessments, incorporated by reference in 902 KAR 30:120, used to assess children from birth to three (3) years of age.

(6) "Cabinet-approved screening protocol" means a screening protocol that is:

(a) Designed to evaluate the developmental status of children; and

(b) Used by the cabinet.

(7) "Child find" is defined by KRS 200.654(3).

(8) "Consent" is defined by 34 C.F.R. 303.7.

(9) "Destruction" means the physical destruction of the record or ensuring that personal identifiers are removed so that the record is no longer personally identifiable under 34 C.F.R. 303.29.

(10) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.

(11) "District Early Intervention Committee" or "DEIC" is defined by KRS 200.654(6).

(12) "Early intervention record" means all records, electronic and hard copy, regarding a child that are required to be collected, maintained, or used under part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400-1482, and 902 KAR Chapter 30.

(13) "Early intervention service provider" is defined by 34 C.F.R. 303.12.

(14) "Early intervention services" is defined by 34 C.F.R. 303.13(a)-(d) and 34 C.F.R. 303.16.

(15) "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

(16) "Evaluation" means the use of procedures to determine eligibility for First Steps services in accordance with 902 KAR 30:120.

(17) "Extraordinary family expenses" means those out of pocket expenses, including purchases, medical care cost, and home or automobile modifications to accommodate the needs related to the eligible child's disability***[,]*** and***[these expenses related]*** to other family members with a disability***, except for[, These considerations do not extend to]*** medical services for other family members without a disability.

(18) "Family-centered" means practices that:

(a) Are driven by the family's priorities and concerns;

(b) Support the family's role as the constant in a child's life;

(c) Complement a family's natural activity settings and daily routines; and

(d) Support, respect, encourage, and enhance the strengths, competence, and confidence of the family.

(19)[~~(18)~~] "First Steps" means Kentucky's early intervention system, which is defined by KRS 200.654(8).

(20)[~~(19)~~] "First Steps data management system" means the online data system that consists of each child's early intervention record and financial management data.

(21)[~~(20)~~] "Homeless child" means a child who meets the federal definition of homeless children and youths established in 42 U.S.C. 11434a(2).

(22)[~~(21)~~] "Inability to pay" means a family's income is below 200 percent of the poverty level.

(23)[~~(22)~~] "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.

(24)[~~(23)~~] "Individualized family service plan" or "IFSP" means an individual family service plan as defined by 34 C.F.R. 303.340.

(25)[~~(24)~~] "Initial assessment" means the assessment of the child and family assessment conducted prior to the child's first IFSP meeting.

(26)[~~(25)~~] "Kentucky Early Childhood Data System" or "KEDS" means the internet based data collection system to provide data for analysis to determine the degree to which Kentucky's children are meeting the major child outcomes and learning standards required by the Office of Special Education Programs (OSEP) in the United States Department of Education and the state early childhood standards.

(27)[~~(26)~~] "Multidisciplinary team" is defined by 34 C.F.R. 303.24

(28)[~~(27)~~] "Natural environments" is defined by 34 C.F.R. 303.26.

(29)[~~(28)~~] "Parent" means:

(a) A natural, adoptive, or foster parent of a child;

(b) A guardian, except for the state if the child is a ward of the state;

(c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) An individual assigned as a surrogate parent pursuant to 20 U.S.C. 1439(a)(5).

(30)[~~(29)~~] "Part C Coordinator" means the individual designated by the cabinet to be Kentucky's liaison with the federal Department of Education, Office of Special Education Programs (OSEP)**,** to oversee the state's implementation of the early intervention system.

(31)[~~(30)~~] "Participating provider or agency" is defined by 34 C.F.R. 303.403(c).

(32)[~~(31)~~] "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by the child's parent or legal guardian, inclusive of disappearance; or

(d) Change of residence to another state.

(33) "Personally identifiable" means information that contains:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or TOTS number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(34)[~~(32)~~] "Point of entry" or "POE" is defined by KRS 200.654(12).

(35)[~~(33)~~] "Prematurity" means a gestational age, at birth, of less than thirty-seven (37) weeks.

(36)[~~(34)~~] "Primary referral source" is defined by 34 C.F.R. 303.302(c) and 34 C.F.R. 303.303(c).

(37)[~~(35)~~] "Primary service provider" means a professional who is a member of the IFSP team and is selected by the parent as the team lead to provide regular support to the family.

(38)[~~(36)~~] "Qualified service provider" means a provider who meets the qualifications listed in 902 KAR 30:150.

(39)[~~(37)~~] "Record review team" means a group of early intervention experts representing each discipline of early intervention providers as listed in 902 KAR 30:150, Section 2(1)(a)-(r), who are utilized by the state lead agency to review complex cases for eligibility and service provision, and make recommendations to IFSP teams.

(40)[~~(38)~~] "Referral" means a child identified between birth and three (3) years of age who is:

(a) A Kentucky resident or a homeless child within the boundaries of the Commonwealth; and

(b) Suspected of having an established risk diagnosis or a developmental delay.

(41)[~~(39)~~] "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303.22, 20 U.S.C. Chapter 33, and KRS 200.650 to 200.676.

(42)[~~(40)~~] "Ward of the state" means a child declared by a circuit court judge to be a ward of the state pursuant to KRS 625.043(2) or 625.100(2).

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 12, 2014)

902 KAR 30:110. Point of Entry and service coordination.

RELATES TO: KRS 200.662, 200.664, 200.668, 200.670, 34 C.F.R. 303.34, 303.164, 303.165, 303.167, 303.303, 303.342, 303.344, 303.403, 303.421, 20 U.S.C. 1400, 1435, 42 U.S.C. 280g-1, 701, 1381, 1396, 1397, 5106, 9801, 10401, 15001-15009

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1)(a) The point of entry (POE) staff shall serve as the local lead agency and shall coordinate child find efforts with:

1. Programs authorized under part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C 1400; and

2. Other state and federal programs serving this population.

(b) The primary referral sources described in paragraph (a) of this subsection may include:

1. Maternal and child health programs, including the Maternal, Infant and Early Childhood Home Visiting Program, under Title V of the Social Security Act (42 U.S.C 701(a));

2. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C 1396(a)(43) and 1396(a)(4)(B));

3. Head Start, including Early Head Start programs under section 645A of the Head Start Act (42 U.S.C. 9801);

4. Supplemental Security Income (SSI) programs under Title XVI of the Social Security Act (42 U.S.C 1381);

5. Child protection and child welfare programs, including programs administered by and services provided through the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a)) and 922 KAR 1:330, Section 3(10)-(11);

6. Programs authorized through 42 U.S.C 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act;

7. Child care programs and early learning programs;

8. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401);

9. Early Hearing Detection and Intervention (EDHI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); 10. The Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa);[~~and~~]

11. Hospitals, including prenatal and postnatal care facilities, and physicians;

12. Parents, including parents of infants and toddlers; and

13. Homeless shelters.

(c) Primary referral sources are required to refer a child as soon as possible, but in no case more than seven (7) days***[;]*** after the child has been identified as potentially eligible.

(2) Each POE shall have procedures in place that provide for accepting the referrals of a child under the age of three (3) who:

(a) Is the subject of a substantiated case of child abuse or neglect;

(b) Who has a suspected developmental delay; or

(c) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(3) Each POE staff shall maintain accessibility and provide public awareness activities in each of their districts.

(4)[~~(3)~~] The POE staff shall maintain communication with the District Early Intervention Committee (DEIC) and the state lead agency on matters of child find, service options, and other issues relevant to the First Steps Program.

(5)[~~(4)~~] The POE staff shall accept all referrals for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written referral, POE staff shall determine if:

1. The family is aware that a referral is being made; and

2. The referral is appropriate based on:

a. The child's age, which shall be between birth and three (3) years old;

b. The family's residence within the assigned district or the family being homeless; and

c. An established risk diagnosis or a developmental concern.

(b) A child who is referred due to a developmental concern, and not screened by the primary referral source, shall have a cabinet approved screening protocol completed prior to the initial evaluation.

(c) If the point of entry finds the child does not meet the criteria established in paragraph (a)2. of this subsection, the POE shall provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:

1. Public schools;

2. The Department for Community Based Services;

3. Medical services;

4. Other appropriate community services; or

5. Another POE if residency alone is the reason for an inappropriate referral.

(d) If it is determined that the child meets the criteria established in paragraph (a)2. of this subsection, POE staff shall contact the family by telephone or letter within five (5) working days of receipt of the referral to provide information about the program and obtain consent for intake.

(e) For a child referred due to an established risk condition, if the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(f) For a child referred due to a developmental concern that has been confirmed by administration of the cabinet approved screening protocol, if the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(g) The parent or guardian of a child referred due to a developmental concern shall:

1. Be provided with prior written notice of the POE's intent to administer the cabinet approved screening protocol. The notice shall include the option to request an evaluation at any time during the screening procedure; and

2. Give written consent prior to the administration of the cabinet approved screening protocol by signing the Notice of Action and Consent for Screening, Evaluation and Assessment (FS-8).

(h) If the family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall document in the child's record the refusal of services.

(i) If the POE staff is unable to contact the family within five (5) working days from the date of the referral, a follow-up letter shall be sent to the family and the case closed.

(j) If the POE is able to contact the family initially**,** but the family fails to return the screening protocol or consent, the POE shall send a First Steps Notice of Action (FS-9) and close the case five (5) working days from the date of notice.

(6)[~~(5)~~] All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program ***shall[~~will~~]*** not provide an evaluation to determine eligibility for First Steps, but with written consent ***shall[~~will~~]*** refer the child to the state and local education agency or other community resource.

(7)[~~(6)~~] The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested. A complete record shall include:

(a) A hard copy of all documents that include a parent

signature;

(b) Any correspondence generated by the POE; and

(c) The data entered into the child's electronic early intervention record in the First Steps data management system.

(8)[~~(7)~~] The POE staff shall provide data as requested by the DEIC.

Section 2. Service Coordination. (1) The service coordinator shall serve as the main point of contact in helping families obtain the services and assistance they need.

(2) During the intake process, the service coordinator shall:

(a) Identify the purpose of the visit;

(b) Discuss the role of the service coordinator;

(c) Explain the First Steps service delivery system, including:

1. The consultative model and primary service provider; and

2. The First Steps system of payment, which includes:

a. The family share participation fee; and

b. The billing of public and private insurance for early intervention services;

(d) Interview the family and document findings related to:

1. The parent or guardian's developmental concern for the child; and

2. The pregnancy, birth, and health information;

(e) Explain the family rights by reviewing the Family Rights Handbook;

(f) Discuss the forty-five (45) day timeline and determine the next action needed to determine eligibility for the child;

(g) Discuss evaluation and service options;

(h) Obtain parent or guardian signature on the First Steps Consent to Release/Obtain Information (FS-10) form for medical and developmental information;

(i) Collect insurance information and data necessary for billing and obtain parent or guardian signature on the Notice and Consent for Use of Private Insurance (FS-12A) form;[~~and~~]

(j) Assess the family's ability to pay using the Financial Assessment Verification (FS-13) form; and

(k) Inform the family of the transition process by:

1. Providing the Notice of Transition (FS-11); and

2. Obtaining parental consent to the transition process.

(l) ***Inform the family[~~Families shall be informed~~]*** of the right to decline, within thirty (30) days of consent, or to revoke consent at any time, ***for*** participation in the transition activities, which includes:

1. The disclosure of personally identifiable information to the Kentucky Department of Education (KDE) and the local education authority (LEA); and

2. Having a transition conference.

(3) The service coordinator shall:

(a) Assist the parents of infants and toddlers with disabilities with obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

(b) Coordinate the provision of early intervention services and other services, including educational, social, or medical services that are not provided for diagnostic or evaluative purposes, that the child needs or is being provided;

(c) Coordinate evaluations and assessments;

(d) Facilitate and participate in the development, review, and evaluation of IFSPs;

(e) Conduct referral and other activities to assist families in identifying available early intervention service providers;

(f) Coordinate, facilitate, and monitor the delivery of early intervention services to ensure that the services are provided in a timely manner;

(g) Conduct follow-up activities to determine that appropriate early intervention services are being provided;

(h) Coordinate the funding sources for service;

(i) Facilitate the development of a transition plan to preschool, school, or, if appropriate, to other services;

(j) Provide written confirmation in accordance with 34 C.F.R. 303.342(d)(2) to the parent or guardian and all IFSP team members of the date, time, and location of the meetings for the initial and annual Individual Family Service Plan (IFSP), the six (6) month review, and any other IFSP team meeting or the transition conference at least seven (7) calendar days prior to the IFSP, review, or transition conference date;

(k) If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting date;

(l) Reassess the family's ability to pay at the six (6) month review and annual IFSP meeting, and at other times if requested by the family; and

(m) Following the IFSP meeting:

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) working days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) working days of the meeting and provide copies to persons identified and consented to by the family; and

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130, Section 2(5)(i)[~~; and 5. Ensure that transition steps and services are discussed with the family during each IFSP meeting~~].

(4) The service coordinator shall inform the family of the family's rights and procedural safeguards by:

(a) Summarizing the Family Rights Handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards at every IFSP meeting;

(c) Ensuring that all materials are given to the family in a format the family can understand in the family's native language; and

(d) Assisting the family, at the family's request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district; and

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family.

(6) The service coordinator shall ensure that service coordination is available to families***, at their request,*** during normal business hours***[and at the family's request]***.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8)[~~The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.~~

~~(9)~~] If a family desires a change in the family's service coordinator, the family shall contact the POE***,*** and the POE shall seek to resolve the situation.

(9)[~~(10)~~] The service coordinator shall inform the family of the [~~facilitate the development of a~~] transition process[~~plan~~] by:

(a) Reviewing the Notice of Transition (FS-11) and ***obtaining [~~obtain~~]*** parental consent for the transition procedures. With parental consent, the service coordinator shall:

1. Ensure[~~Knowing the transition procedures as established in 902 KAR 30:130, Section 3(4)(f);~~

~~(b) Ensuring~~] that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

2. Hold[~~(c) Holding~~] a transition conference at least ninety (90) calendar days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the special education local school district representative, and staff from potential next placement options; and

3. Include[~~(d) Including~~] at least one (1) transition outcome as a part of every IFSP that is consistent with 34 C.F.R. 303.344(h); and

(b) Confirming child find information was transmitted to the

LEA and, with parental consent, ***releasing[release]*** additional information needed by the LEA to ensure the continuity of services from the part C program to the part B program. This additional information may include:

1. The most recent evaluation and assessment of the child;
2. The most recent assessment of the family; and
3. The most recent IFSP.

(10)[(11)] The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within ten (10) calendar[five (5)] days of the date of service and ***shall*** include:

(a) The date of contact;
(b) Amount of time spent;
(c) Reason for contact;
(d) Type of contact whether by telephone or face-to-face;
(e) Result of contact; and
(f) Plan for further action.

(11)[(12)] The service coordinator shall document in the First Steps data management system all contacts attempted but not made.

(12)[(13)] The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(13)[(14)] If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.421 to the family which includes what services are terminating, and the date services will terminate, within five (5) working days after notice from the family of the family's choice to end services.

(14)[(15)] If the family is absent from a scheduled service with no prior notice for two (2) consecutive visits, the service provider shall notify the service coordinator after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, notify each provider of the result of the discussion; or

2. If unable to contact the family within five (5) working days, send the family a notice of action without consent to indicate service will be terminated within five (5) working[seven (7)] days of the date of the notice; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Family Rights Handbook", April 2014[December 2010];

(b) "First Steps Notice of Action (FS-9)", September 2012;

(c) "First Steps Consent to Release/Obtain Information (FS-10)", April 2014[May 2012];

(d) "Financial Assessment Verification (FS-13)", May 2012;[and]

(e) "Notice and Consent for Use of Private Insurance (FS-12A)", May 2012;

(f) "Notice of Action and Consent for Screening, Evaluation and Assessment (FS-8)", March 2014; and

(g) "Notice of Transition (FS-11)", March 2013.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014
FILED WITH LRC: May 9, 2014 at 2 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 12, 2014)

902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 211.647, 216.2970, 34 C.F.R. 303.11, 303.321, 303.322, 303.421, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS***[194A.030(7),]*** 194A.050, 200.660(7), 34 C.F.R. ***303.300,*** 303.321, 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Initial Eligibility. (1) Initial eligibility shall be determined by the review and synthesis of:

(a) The results of[Administering] at least one (1) multi-domain evaluation instrument designed to confirm the presence of a significant developmental delay;

(b)[Gathering] Information about the child's developmental history through parent interview;

(c) Identification of[Identifying] the child's level of functioning in each developmental area;

(d)[Gathering] Information from other sources, such as childcare workers; and

(e)[Reviewing] All available medical and educational records.

(2) A child shall be eligible for First Steps service if the child:

(a) Is age birth up to three (3) years;

(b) Is a resident of Kentucky or homeless within the boundaries of the state at the time of referral and resides in Kentucky while receiving early intervention services; and

(c) 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician. The established risk condition shall be documented in the child's record through the First Steps on-line data management system.

(b) ***The First Steps Established Risk Condition List[A list of approved established risk diagnoses]*** shall be maintained by the First Steps Program***[and made available in policies and procedures]***[is incorporated by reference in this administrative regulation].

1. A child with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a developmental evaluator using a cabinet-approved, criterion referenced assessment instrument in lieu of a norm-referenced evaluation, in accordance with 902 KAR 30:130.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be[:

a.] performed by a speech therapist or a teacher of the deaf and hard of hearing[; and

b. Authorized as a discipline specific assessment].

(4) Eligibility by developmental delay:

(a) A child meeting the criteria established in subsection (2)[(1)](a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process,

in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development.

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm-referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c)1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The initial evaluator and a parent or guardian have a concern or suspect that the child's delay is greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall be considered as part of[~~determine~~] the child's eligibility if the standardized scores indicate a delay of at least two (2) standard deviations.

(5) Eligibility by professional judgment. A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team, as described in 902 KAR 30:150 Section 2(3)(e);

(b) An approved intensive level evaluation team, as described in 902 KAR 30:150 Section 2(3)(d); or

(c) The designated record review team, if reviewing for eligibility.

Section 2. Initial Child Evaluation. (1) Prior to the administration of an evaluation instrument, the child's vision and hearing status shall be determined through screening or evaluation.

(2) A child referred to the First Steps Program who meets the criteria established in Section 1(2)(a) and (b) of this administrative regulation shall receive an initial evaluation[~~to determine eligibility~~] if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol;

(b) The child does not have an established risk diagnosis; and

(c) The parent requests and consents to an evaluation.

(3) For a child without an established risk diagnosis, an initial evaluation shall be used to:

(a)[~~Determine eligibility;~~

~~(b)~~] Determine developmental status; and

(b)[~~(c)~~] Establish the baselines for progress monitoring[~~; and~~

~~(d) Make recommendations to the Individual Family Service Plan (IFSP) team~~].

(4) For a child with an established risk diagnosis, a criterion referenced assessment shall be completed to:

(a) Determine developmental status; and

(b) Establish the baseline for progress monitoring[~~; and~~

~~(c) Make recommendations to the Individual Family Service Plan (IFSP) team~~].

(5)(a) Initial evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument, in accordance with 902 KAR 30:130.

(b) The initial evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a[~~recent~~] complete history and physical examination and other medical information; and

2. A developmental component completed by a cabinet-approved initial evaluator, in accordance with 902 KAR 30:150, that includes:

a. A statement of the child's health status during the evaluation, including notation of health issues that affect the results of the evaluation[~~review of pertinent health and medical information~~]; and

b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs.

(c) An evaluation report shall be entered into the First Steps online data management system:

1. Within five (5) working days of the completion of the evaluation; and

2. In clear, concise language that is easily understood by the family.

(6) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (7) of this section; and

(b) The records contain the developmental evaluation information required by subsection (5)(b) of this section.

(7) If there is a[~~recent medical or~~] developmental evaluation available, as required by subsection (5)(b) of this section, it shall be considered as part of the child's[~~used to determine~~] eligibility if the evaluation was performed within:

(a) Three (3) months prior to referral to First Steps, for a child under twelve (12) months of age; or

(b) Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.

(8)(a) A child referred to the First Steps program who was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity, unless the child is twenty-four (24) months of age or older at the time of the referral.

(b) For a child who is less than six (6) months corrected age, the initial evaluation shall be done by an approved intensive level evaluation team, an approved neonatal follow-up program team, or an approved district child evaluation specialist in accordance with Section 1(5) of this administrative regulation.

(9) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall:

(a) Provide a First Steps Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and

(b) Discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other community programs.

(10) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

1. The child does not meet eligibility guidelines at the initial evaluation;

2. The initial evaluator and a parent or guardian have concerns that the child is developing atypically; and

3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

Section 3. Annual Redetermination of Eligibility. (1) A redetermination of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First

Steps services if:

(a) The child is:

1. Under three (3) years old; and

2. A resident of Kentucky or homeless within the boundaries of the state; and

(b) The result of the most recent progress review, including the annual five (5) area assessment, demonstrates:

1. A significant delay in at least one (1) or more developmental areas; and

2. Continued First Steps services are required in order to support continuing developmental progress.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas[~~by the Primary Service Provider (PSP)~~] using a cabinet-approved criterion referenced instrument, in accordance with 902 KAR 30:130, and ***shall be completed between thirty (30) and sixty (60)[~~and be completed no more than sixty (60) and no less than thirty (30)~~]*** days prior to the annual IFSP date.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making records and reports available at the meeting.

Section 4. Determination of Child's Hearing Status. (1) If the referral is for a child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an established risk diagnosis and be eligible for First Steps services and the referral process shall continue.

(2) If the referral is for a child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "First Steps Notice of Action (FS-9)", October 2012 edition; and

(b) "First Steps[~~:~~] Established Risk Condition list", January 2014[~~Conditions", December 2010~~].

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 12, 2014)

902 KAR 30:130. Assessment, service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.321, 303.340-303.346, 20 U.S.C. 1435, 1436, 1437

STATUTORY AUTHORITY: KRS***[~~194A.030(7),~~]*** 194A.050***(1)***, 200.660(8), 20 U.S.C. 1436

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the requirements for assessment, the Individualized Family Service Plans used in First Steps, and assistive technology.

Section 1. Child Assessment. (1) Assessment shall be an on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150, Section (2)(a)-(p), throughout the child's period of eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs; and

(b) The services appropriate to meet those needs.

(2) All evaluations and assessments of the child and family shall be conducted in a nondiscriminatory manner and selected and administered so as not to be racially or culturally discriminatory.

(3) Unless clearly not feasible to do so, all assessments of a child shall be conducted in the native language of the child.

(4) Assessments shall reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations;

2. Interview and parent reports; or

3. Behavioral checklist and inventories.

(b) Direct assessment shall include one (1) or more instruments that are:

1. Appropriate for an infant or toddler and allow for adaptations for a disability as needed; and

2. Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(5) If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team's reasons for an additional assessment;

(b) Whether a current provider on the IFSP team can assess the area or areas of concern; and

(c) Circumstances relating to the child's ability or the family's capacity to address the child's developmental needs that warrant the subsequent assessment.

(6) POE staff shall obtain a physician's or advanced practice registered nurse's (APRN's) written approval in order to complete an assessment on a child deemed medically fragile. The approval shall be specific as to the modifications needed to accommodate the child's medical status.

(7) A formal, direct assessment shall include a written report if performed for initial assessment, the annual assessment, or exit assessment, or if authorized by the IFSP. This report shall include:

(a) A description of the assessment instruments used in accordance with subsection (4)(b) of this section;

(b) A description of the assessment activities in accordance with subsection (4)(a) of this section[~~and the information obtained, including information gathered from the family~~];

(c) Identifying information, including:

1. The child's First Steps identification number;

2. The name of the child;

3. The child's age at the date of the assessment;

4. The name of the service provider and discipline;

5. The date of the assessment;

6. The setting of the assessment;

7. The state of health of the child during the assessment including a statement of the child's vision and hearing status;

8. The parent's assessment of the child's performance in

comparison to abilities demonstrated by the child in more familiar circumstances;

9. The medical diagnosis if the child has an established risk condition;

10. Who was present for the assessment; and

(d) A profile of the child's level of performance, in a narrative form which shall indicate the:

1.[~~Concerns and priorities; 2.~~] Child's unique strengths and needs[~~, and preferences~~];

2.[~~3.~~] Skills achieved since the last report, if applicable; and

3.[~~4.~~] Current and emerging skills, including skills performed independently and with assistance[~~; and 5. Recommended direction for future service delivery~~].

(8) Item level data from the cabinet-approved criterion referenced assessment protocol, in accordance with ***this administrative regulation[902 KAR 30:130]***, shall be submitted electronically to the Kentucky Early Childhood Data System within five (5) working days of the completion of the assessment.

(9) (a) The initial or other formal assessments, with written reports, shall be completed and recorded in the child's record using the First Steps data management system within five (5) working days of the provider completing the assessment.

(b) The provider who performed the assessment shall:

1. Write the report in family-appropriate language that the child's family can easily understand;

2. Provide the written report to the family within the time frame established in paragraph (a) of this subsection; and

3. Document in the child's record the date the report was mailed to the family[~~Verbally share the assessment report with the family and shall document the contact in the assessor's notes;~~

~~2. Provide the written report to the family within the time frame established in paragraph (a) of this subsection; and~~

~~3. Write the report in family-appropriate language that the child's family can easily understand~~].

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the reason for the delay[~~circumstances in staff notes with supportive documentation made~~] in the child's record[~~by the service coordinator~~].

(10)(a) An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be authorized as an[~~considered~~] early intervention service, not as an assessment.

(b) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(11) Five (5) working days prior to either the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall complete progress reports in the online data management system and provide a copy to the family.

(12)(a) Within thirty (30) days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains[~~by the Primary Service Provider (PSP)~~] using a cabinet-approved criterion referenced instrument, in accordance with ***this administrative regulation[902 KAR 30:130]***.

(b) The assessment used for annual redetermination of eligibility may be used to meet the assessment required by paragraph (a) of this subsection if it is completed within ninety (90) days prior to the child's exit from the First Steps Program.

Section 2. Family Assessment. (1) The family assessment shall be conducted with the family of a child eligible for early intervention services to identify the family's resources, priorities, and concerns for their child.

(2) The identification of the family's resources, priorities, and concerns shall be:

(a) Voluntary on the part of the family;

(b) Family directed;

(c) Based on information provided by the family through an assessment tool and personal interview with those members who elect to participate in the assessment; and

(d) Used to determine the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible child.

(3) Unless clearly not feasible to do so, the family assessment shall be conducted in the native language of the family members being assessed.

(4) POE staff shall provide a written report of the family assessment to the family within five (5) working days of the parent interview.

(5) The family assessment report shall contain recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information.

(6) The family assessment shall be updated prior to the six (6) month IFSP meeting and shall be re-administered prior to the annual IFSP meeting.

Section 3. Individualized Family Service Plan (IFSP). (1) For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(2) The IFSP shall be reviewed by convening a meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) A periodic IFSP review meeting is requested by:

1. The family; or

2. The family and a team member; or

(b) An early intervention service is added or increased.

(3) The purpose of the periodic review shall be to determine:

(a) The degree to which progress toward achieving the results or outcome identified in the IFSP is being made; and

(b) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

(4) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(5) A face to face meeting shall be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family.

(6) IFSP meetings shall be conducted:

(a) In settings and at times that are convenient for the family; and

(b) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(7) The contents of the IFSP shall be fully explained to the parent and informed written consent obtained prior to the provision of early intervention services described in the IFSP. The signed IFSP shall be a contract between the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(8) Each initial meeting and each annual IFSP team meeting to evaluate the IFSP shall include the following participants:

(a) The parent or parents of the child;

(b) Other family members, as requested by the parent, if feasible to do so;

(c) An advocate or person outside the family, if the parent requests that the person participate;

(d) The service coordinator who is responsible for implementing the IFSP;

(e) The person directly involved in conducting the evaluation and assessment of the child; and

(f) As appropriate, the provider who will be providing early intervention service to the child and family.

(9) If the person identified in subsection (8)(e) of this section is unable to attend a meeting, arrangements shall be made for that person's participation through other means, including one (1) of the following:

(a) Participating in a telephone conference call;

(b) Having a knowledgeable representative attend the meeting; or

(c) Making pertinent records available at the meeting.

(10)[~~(4)~~] The IFSP shall include:

(a) Information about the child's present level of developmental

functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;

2. Cognitive development that includes skills related to the child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of the child to successfully and appropriately select and carry out their interpersonal goals; and

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions;

(b) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(c) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in natural settings, during child interaction, and through parent report;

(d) With concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child;

(e)1. A statement of the measurable results or measurable outcomes expected to be achieved for the child, including pre-literacy and language skills as developmentally appropriate for the child, which shall:

a. Be functionally stated;

b. Be representative of the family's own priorities;

c. Fit naturally into the family's routines or schedules;

d. Reflect the use of the family's own resources and social support network; and

e. Be flexible to meet the child and family's needs in current and possible future environments;

2. The criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made; and

3. A statement indicating whether modifications or revision of the outcomes or services are necessary;

(f) At least one (1) measurable transition outcome that addresses any upcoming changes relevant to the child and family or, if the child is two (2) years or older, the steps and services to be taken to support a smooth[~~addresses~~] transition of the child to preschool or other appropriate[~~related~~] services***. This shall include[~~, and includes~~]***:

1. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition[~~A description of types of information the family might need to assist in preparing for the upcoming changes and in relation to future placements~~];

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting or activity; and

4. Identification of transition service and other activities the IFSP team determines are necessary to support the transition of the child[~~A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement~~];

(g) The statement of the specific early intervention services, based on peer-reviewed research to the extent practicable, that are necessary to meet the unique needs of the child and family to achieve the results or outcomes and which:

1. Are stated in length, frequency, intensity, duration, location and method of delivering services; and

2. Include payment arrangements;

(h)1. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

2. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment;

3. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4. If the service cannot be provided in a natural environment, the reason, including:

a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;

b. How the service is supported by the peer reviewed research;

c. How the service provided in this location or using this approach will support the child's ability to function in his or her natural environment; and

d. A timeline as to when the service might be expected to be delivered in a natural environment approach;

(i) The dates for initiation of the services and the anticipated duration of those services;

(j)1. Other services that the child needs that are not early intervention services, such as medical services or housing for the family; and

2. Identification of the funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources;

(k) The name of:

1. The service coordinator representing the child's or family's needs who shall be responsible for the implementation of the IFSP and coordination with other agencies and person in accordance with 902 KAR 30:110, Section 2; and

2. The primary service provider;

(l) A review of the Family Rights Handbook; and

(m) A statement signed by the parent that complies with KRS 200.664(6).

(11)[~~(5)~~] The IFSP shall be finalized within five (5) working days of the meeting.

(12)[~~(6)~~](a) An authorized IFSP shall be valid for a period not to exceed six (6) months. An amendment that is made to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(13)[~~(7)~~] In the development and implementation of the IFSP, IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services;

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Determine the settings for service delivery based on the child's results or outcomes that are identified by the team; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible;

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting which includes children without disabilities.

(14)[~~(8)~~] If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First

Steps service unless:

(a) The IFSP team:

1. Considers the recommendation;

2. Determines that it relates to a chosen outcome or result, and family priority; and

3. Agrees that it is a necessary service; and

(b) The service is not covered by another payor source.

Section 4. Assistive Technology. (1) To access assistive technology services and devices, the child shall:

(a) Be eligible for First Steps; and

(b) Have the need for and use of assistive technology devices and services documented in the IFSP.

(2) Prior to submitting a request for purchase of an assistive technology device, the service coordinator shall attempt to obtain funding from at least two (2) sources outside the First Steps and Medicaid systems.

(3) The First Steps assistive technology review team shall review:

(a) Each equipment request for which the purchase price exceeds $100; or

(b) A request submitted by the service coordinator, other POE staff, or state lead agency staff.

(4) A request shall be processed within ten (10) working days of the receipt of required information. The required information shall include:

(a) A current IFSP;

(b) Assessments with recommendations;

(c) Justification statement for each device based on needs, including documentation of attempts to find alternative funding sources;

(d) Information regarding the equipment or device request, including information regarding the training of the family on the use of equipment; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(5) The decision made through the review process may be appealed to the Part C Coordinator who shall:

(a) Consult with the monitoring assistive technology review team; and

(b) Issue the final decision.

(6) If the IFSP team is not in agreement with the decision of the Part C Coordinator:

(a) The child's IFSP team shall reconvene for an IFSP meeting with a representative from the assistive technology review team and a representative of the state lead agency; and

(b) If the IFSP team concludes at that IFSP meeting that the assistive technology device is still needed, payment for the device shall be authorized for the duration of the current IFSP.

(7) A request for purchase shall be made no later than ninety (90) days prior to the child's third birthday.

(8) Assistive technology devices purchased solely through First Steps funding shall be the property of the program. ***When[At the time]*** the child exits the program, the family shall:

(a) Return the item to the POE office for the district where the child resides; or

(b) Purchase the item from the program at a depreciated cost.

(9) Assistive technology devices may be rented through a contracted assistive technology provider to:

(a) Determine the appropriateness of the requested item prior to purchase;

(b) Assist the child in achieving the IFSP outcomes or results; or

(c) Address short term needs of the child while awaiting receipt of a purchased device.

(10) The payment for assistive technology devices shall be made in accordance with 902 KAR 30:200 Section 2(5)(a) and (b).

(11) Items that cannot be returned for sanitary reasons, such as adapted utensils, shall not be rented.

Section 5. Incorporation by Reference. (1) "Individualized Family Service Plan", September 2012, is incorporated by reference.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 12, 2014)

902 KAR 30:150. Personnel qualifications.

RELATES TO: KRS 200.650-200.676, 34 C.F.R. 303.31, 303.119, 303.121, 20 U.S.C. 1435(8), (9)

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provider qualifications for participation in First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll providers to carry out the early intervention services according to the provisions of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications established in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall submit an application packet to the cabinet.

(a) The application packet for the individual provider shall include:

1. A copy of the provider's professional license, registration, or certificate; and

2. The Individual Provider Application (RF 6A(I)).

(b) The application packet for the agency shall include:

1. A copy of each provider's professional license, registration, or certificate; and

2. The Agency Application (RF 6A(A)).

(c) All potential providers shall:

1. Have a background check performed by the Administrative Office of the Courts, the Division of Protection and Permanency, and the Sex Offender Registry, with those agencies submitting the results of each background check directly to the cabinet;

2. Agree to provide service within the individual's or agency's scope of practice and in accordance with state and federal regulations and laws relating to First Steps; and

3. Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application shall not be considered complete and shall not be processed until all information and any subsequent documentation requested by the program is provided.

(6) Upon receipt of an approved application packet, the applicant shall be notified of their eligibility to complete orientation training[~~The program shall make an enrollment determination within ninety (90) calendar days of receipt of the information required by subsections (4) and (5) of this section~~].

(7) After successful completion of orientation training[~~If the~~

~~applicant is approved for enrollment~~], the Service Provider Agreement shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes.

(8) A provider's participation shall begin and end on the dates specified in the executed Service Provider Agreement.

(9) If an agency is the enrolled provider, the agency shall be responsible for ensuring that all staff from that agency providing First Steps services meet the First Steps personnel qualifications.

(10) Provider enrollment shall be renewed every even-numbered year.

(a) An individual[~~or agency~~] wishing to renew the Service Provider Agreement shall submit:

1. The Individual Provider Application (Renewal) (RF 6B);

2. A copy of their current licensure for their discipline;

3. A signed Service Provider Agreement;

4. A notarized ***Required Affidavit for Bidders, Offerors, and Contractors***[~~***Multi-provider affidavit***~~];

5. A signed First Steps Provider Code of Ethical Conduct;

6. A completed First Steps Record of Provider Signature (RF-23);

7. A Service Catchment Area;

8. A copy of current professional liability insurance;

9. Authorization for Electronic Deposit of Vendor Payment (Form SAS63);

10. Request for Taxpayer Identification Number and Certification (W-9); and

11. Documentation of completion of required trainings as outlined in the expiring Service Provider Agreement.

(b) An agency wishing to renew the Service Provider Agreement shall submit:

1. The Agency Application (Renewal) (RF 6B(A));

2. A copy of the current licensure for all service providers listed on the agency application;

3. A Service Provider Agreement signed by the agency administrator;

4. A notarized Multi-provider affidavit;

5. A signed First Steps Provider Code of Ethical Conduct for all service providers listed on the agency application;

6. A completed First Steps Record of Provider Signature (RF-23) for all service providers listed on the agency application;

7. A Service Catchment Area for all service providers listed on the agency application;

8. A copy of current professional liability insurance for the agency;

9. Authorization for Electronic Deposit of Vendor Payment (Form SAS63);

10. Request for Taxpayer Identification Number and Certification (W-9); and

11. Documentation of completion of required trainings as outlined in the expiring Service Provider Agreement for all agency staff listed on the service provider agreement[~~the documentation required by subsections (4) and (5) of this section prior to the end date specified in the Service Provider Agreement~~].

(11) If a provider agency is enrolling to provide group services, the agency shall submit:

(a) A copy of a valid child care licensure that meets the requirements stated in 922 KAR 2:090; or

(b) Approval as a contractor for group instruction through the Kentucky Department of Education.

Section 2. Personnel Qualifications. (1) Minimum qualifications for professionals or disciplines providing services in First Steps shall be as established in this subsection.

(a) An audiologist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A licensed marriage and family therapist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have:

1. A bachelor's degree; and

2. An interdisciplinary early childhood education (IECE) certificate,[~~by the Kentucky Education Professional Standards Board, Division of Certification, or be able to obtain~~] a probationary or emergency IECE certificate, or a valid statement of eligibility for IECE certification issued by the Kentucky Educational Professional Standards Board, Division of Certification.

(d) A nurse shall have:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A dietitian shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) An occupational therapist shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(g) An orientation and mobility (O and M) specialist shall have a bachelor's degree in Special Education with emphasis on visual impairment and O and M, in accordance with the Division of Exceptional Children Services, Kentucky Department of Education.

(h) A physician shall have:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(i) A physical therapist shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

(j) A licensed psychologist shall have:

1. A doctoral degree; and

2. A license from the Kentucky Board of Examiners of Psychology.

(k)***1.*** A certified psychologist with autonomous functioning, a licensed psychological practitioner, a certified psychologist or licensed psychological associate shall have:

a.[~~***1.***~~] A master's degree; and

b.[~~***2.***~~] A license or a certificate from the Kentucky Board of Examiners of Psychology.

2.[~~***3.***~~] A licensed psychological associate shall be under the supervision of an actively enrolled First Steps psychologist.

(l) A social worker shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Social Work.

(m) A speech-language pathologist shall have:

1. A master's degree; and

2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. An interim[~~A temporary~~] license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently enrolled First Steps speech-language pathologist.

(n) A teacher of children who are deaf and hard of hearing shall have:

1. A bachelor's degree; and

2. A certificate for teaching the hearing impaired, or a certificate for teaching the hearing impaired with sign language proficiency, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(o) A teacher of the visually impaired shall have:

1. A bachelor's degree; and

2. A certificate for teaching the visually impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A licensed professional clinical counselor shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Licensed Professional Counselors.

(q) An optometrist shall have:

1. A degree from an accredited school or college of optometry; and

2. A license from the Kentucky Board of Optometric

Examiners.

(r) An ophthalmologist shall have:

1. A doctor of medicine degree or doctor of osteopathy degree;

2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing services in First Steps shall be as established in this subsection.

(a) An occupational therapy assistant shall have:

1. An associate's degree in occupational therapy; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(b) A physical therapist's assistant shall have:

1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.

(c) Paraprofessionals shall be under the supervision of a currently enrolled First Steps provider of that discipline as required by the ***professional's[~~professionals~~]*** licensing board practice act.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be as established in this subsection.

(a) A Point of Entry manager shall:

1. Be employed by the Point of Entry;

2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(b), (c), (d), (f), (i), (j), (l), (m), or (p) of this section;***[and]***

3. Have four (4) years of professional experience in an early childhood education capacity or community health agency that serves families with children birth through five (5) years of age in a position in which the following skills and competencies have been demonstrated:

a. Strong interpersonal communication skills, both written and verbal;

b. Ability to create and maintain accurate reports;

c. Ability to handle multiple tasks concurrently, meet deadlines, work independently, and exercise good judgment; and

d. Establish collaboration and leadership while working with families and service providers; and

4.***[Two (2) years of the experience shall]*** Demonstrate progressive responsibility in a supervisory or management capacity in a community or public health organization ***for two (2) years of the experience***.

(b) A service coordinator shall:

1. Be employed by the Point of Entry;

2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(a)-(r) of this section; or

3. Have a bachelor's degree and the equivalency of two (2) years'[~~years of~~] experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years'[~~years of~~] experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(c)[~~(b)~~] A District Child Evaluation Specialist shall:

1. Be employed by the Point of Entry to conduct screening, evaluations and assessments, and provide consultation to service coordinators and **initial[~~primary level~~]** evaluators;

2. Meet the minimum highest entry-level requirements for one (1) of the professions identified in subsection (1)(a)-(r) of this section;

3. Have two (2) years'[~~years of~~] experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

4. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

5. Be approved by the cabinet in accordance with KRS 200.666(1).

(d)[~~(c)~~] An initial evaluator shall:

1. Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have two (2) years'[~~years of~~] experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

4. Be approved by the cabinet in accordance with KRS 200.666(1).

(e)[~~(d)~~] An intensive level evaluation team shall be approved by the Part C Coordinator and shall include:

1. a. A board certified medical professional with expertise in early childhood development;

b. A board certified developmental pediatrician;

c. A pediatrician who has training and experience in the area of early childhood development;

d. A board certified pediatric psychiatrist; or

e. A board certified pediatric neurologist; and

2. One (1) or more developmental professionals identified in subsection (1)(a)-(r) of this section.

(f)[~~(e)~~] An approved neonatal follow-up program team shall be a university-based program that has:

1. Submitted to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

2. Contracted with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(g)[~~(f)~~] An assistive technology ***specialist[~~specialists~~]*** shall:

1.a.(i) Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; and

(ii) Have extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

b.(i) Meet the qualifications established in clause a.(ii) of this paragraph; and

(ii) Be employed by an agency that currently provides assistive technology service in First Steps; and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

(h)[~~(g)~~] To be an approved assistive technology review team, an assistive technology center shall:

1. Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and

2. Contract with the cabinet to conduct reviews of requests for assistive technology devices in accordance with 902 KAR 30:130, Section 4.

(i)[~~(h)~~] A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

(j)[~~(i)~~] A sign language and cued language specialist shall:

1. Meet the qualifications established in 201 KAR 39:030, Section 1(3)(c)[~~3 (1)(a), (b), (c), (e), (m) or (2)(a), (b), (c)~~]; and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

Section 3. Field Experiences - Intervention services implemented by a student. (1) With family consent, a student may

provide early intervention services under the direct one-to-one supervision of a provider qualified in accordance with Sections 1 and 2 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

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

(a) "Form 6A(I), Individual Provider Application (New)", ***2014-2016[~~October 2013~~]***[~~2012~~] edition;

(b) "Form 6A(A) Agency Application (New)", ***2014-2016[~~October 2013~~]*** [~~2012~~] edition;

(c) "Form 6B(I) Individual Provider Application (Renewal)", ***2014-2016[~~November 2013~~]***[~~January 2012~~] edition;

(d) "Form 6B(A) Agency Application (Renewal)", November 2013[~~January 2012~~] edition;

(e) "First Steps Provider Code of Ethical Conduct", October 2013[~~January 2012~~] edition;[~~and~~]

(f) "Form 5A, Service Provider Agreement***",*** FY 2014-2016***[", ~~November 2013~~]***[~~January 2012~~]***[~~edition~~]***;

(g) ***"Required Affidavit for Bidders, Offerors, and Contractors", November 2009[~~"Multi-provider affidavit"~~]***;

(h) "First Steps Record of Provider Signature (RF-23)", August 2008 edition;

(i) "Service Catchment Area***",*** (RF 6 Attachment)***, 2014-2016["]***;

(j) "Authorization for Electronic Deposit of Vendor Payment***",*** (Form SAS63)***["]***, July 2006 edition; and

(k) "Request for Taxpayer Identification Number and Certification***",*** (W-9)***["]***, January 2002 edition.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 11, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(As Amended at ARRS, September 12, 2014)

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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 to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced practice registered nurse[~~practitioner~~]" or "APRN[~~ARNP~~]" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "***Behavior[~~Behavioral~~]*** support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) At least one (1) year of experience in behavioral programming.

(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section ***6[~~7~~]*** of this administrative regulation and consumer-directed option services identified in Section ***7[~~8~~]*** of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) ***"Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056[~~"Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.~~***

~~(10)~~][~~"Communicable disease" means a disease that is transmitted:~~

~~(a) Through direct contact with an infected individual;~~

~~(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or~~

~~(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another]~~.

(10)[~~(11)~~] "Consumer" is defined by KRS 205.5605(2).

(11)[~~(12)~~] "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(12)[~~(13)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(13)[~~(14)~~] "DCBS" means the Department for Community Based Services.

(14)[~~(15)~~] "Department" means the Department for Medicaid Services or its designee.

(15)[~~(16)~~] "Developmental disability" means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;
5. Self-direction; or
6. Capacity for independent living.

(16)[~~(17)~~] "***Direct care[~~Direct-contact~~]*** staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:

(a)1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2.a. Is twenty-one (21) years of age or older; and

b. Is able to communicate with a recipient in a manner that the recipient or recipient's legal representative or family member can understand;

(b) Has a valid Social Security number or valid work permit if not a U.S. citizen;

(c) Can understand and carry out simple instructions;

(d) Has the ability to keep simple records; and

(e) Is managed by the provider's supervisory staff.

(17)[~~(18)~~] "Electronic signature" is defined by KRS 369.102(8).

(18)[~~(19)~~] "Federal financial participation" is defined in 42 C.F.R. 400.203.

(19)[~~(20)~~] "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(20)[~~(21)~~][~~(20)~~] "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.

(21)[~~(22)~~][~~(21)~~] "Intellectual disability" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent deficits[~~dificits~~] or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(22)[~~(23)~~][~~(22)~~] "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.

(23)[~~(24)~~][~~(23)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24)[~~(25)~~][~~(24)~~] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(25)[~~(26)~~][~~(25)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(26) ***"Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.***

(27) "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(28) **"Licensed psychologist" means an individual who:**

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(29)[~~(27) "Licensed psychological practitioner" means an individual who:~~

[~~(a) Meets the requirements established in KRS 319.053; or~~

[~~(b) Is a certified psychologist with autonomous functioning.~~

(28)][~~(26)~~(26)] "Michelle P. ***waiver*** recipient" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(30)[(29)][~~(28)~~][~~(27)~~] "Normal ***babysitting[~~baby sitting~~]***" means general care provided to a child which includes custody, control, and supervision.

(31)[(30)][~~(29)~~][~~(28)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(32)[(31)][~~(30)~~][~~(29~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(33)[(32)][~~(31)~~] [~~(30)~~] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(34)[(33)][~~(32)~~][~~(31)~~] "Physical therapist" is defined by KRS 327.010(2).

(35)[(34)][~~(33)~~][~~(32)~~] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(36)[(35)][~~(34)~~][~~(33)~~] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(37)[(36)][~~(35)~~][~~(34)~~] "Plan of care" or "POC" means a written individualized plan developed by:

(a) A Michelle P. ***waiver*** recipient or a Michelle P. ***waiver*** recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the Michelle P. ***waiver*** recipient if the Michelle P. ***waiver*** recipient designates another person.

(38)[(37)][~~(36)~~][~~(35)~~] "Plan of treatment" means a care plan used by an ADHC center.

[(38)][~~(37)~~][~~(36)~~]***["Psychologist" is defined by KRS 319.010(8).]***

(39)[~~(38)~~][~~(37)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(40)[~~(39)~~][~~(38)~~] "Qualified ***professional in the area of intellectual disabilities[~~Intellectual Disability Professional" or "QIDP~~]***" is defined by KRS 202B.010(12).

(41)[~~(40)~~][~~(39)~~] "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has ***at least*** one (1) year ***of[~~or more~~]*** experience as a ***licensed practical nurse or a registered[~~professional~~]*** nurse.

(42)[~~(41)~~][~~(40)~~] "Representative" is defined by KRS 205.5605(6).

(43)[~~(42)~~][~~(41)~~] "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR ***12:010[~~1:145~~]***, Section 7.

(44)[~~(43)~~][~~(42)~~] "Sex crime" is defined by KRS 17.165(1).

(45)[~~(44)~~][~~(43)~~] "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(46)[~~(45)~~][~~(44)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(47) "State plan" is defined by 42 C.F.R. 400.203.

(48)[~~(46)~~][~~(45)~~] "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct***[-]***care staff and who:

(a)1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma ***or GED***; or

2.***[~~a.~~]*** Is twenty-one (21) years of age or older;

(b)[~~and~~

~~b.~~] Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;

(c)[~~(b)~~] Is able to adequately communicate with the recipients, staff, and family members;

(d)[~~(c)~~] Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(e)[~~(d)~~] Has the ability to perform required record keeping.

(49)[~~(47)~~][~~(46)~~] "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(50)[~~(48)~~][~~(47)~~] "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) Six (6)***[-]***month budget.

(51)[~~(49)~~][~~(48)~~] "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;

3. 902 KAR 20:081 if a home health ***agency[~~service provider~~]***; or

4. 902 KAR 20:091 if a community mental health center; or

(b)***[Be]*** Certified by the department in accordance with 907 KAR ***12:010[~~1:145~~]***, Section 3, if ***the provider's type is[~~a provider type~~]*** not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver***[~~service~~]*** provider shall:

(a) Provide services to Michelle P. waiver recipients:

1. Directly; or

2. Indirectly through a subcontractor;

(b) Comply with the following administrative regulations and program requirements:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. 907 KAR 1:673;

(c) Not enroll a Michelle P. ***waiver*** recipient for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(d) Be permitted to accept or not accept a Michelle P. ***waiver*** recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record for each Michelle P. ***waiver*** recipient that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP ***[-]***351 and signed by the:

a. Assessment team; and

b. Department;

3. A completed MAP 109;

4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a Michelle P. ***waiver*** recipient;

9. Documentation that the Michelle P. ***waiver*** recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;

d. Itemization of each service delivered;

e. The Michelle P. ***waiver*** recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;

f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. ***waiver*** recipient's needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor, three (3) years after the recipient reaches the age of majority under state law.

(2) Upon request, a Michelle P. ***waiver*** provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) United States Government Accountability Office or its designee;

(e) Kentucky Office of the Auditor of Public Accounts or its designee; or

(f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. ***Waiver*** Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. ***waiver*** recipient who:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-IID[~~ICF-MR-DD~~] or a nursing facility.

(2) The department shall perform a Michelle P. waiver service level of care determination for each Michelle P. ***waiver*** recipient at least once every twelve (12) months or more often if necessary.

(3) A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. A nursing facility; or

3. An ICF-IID[~~ICF-MR-DD~~];

(c) Is a resident of a licensed personal care home; or

(d) Is receiving services from another Medicaid home and community based services waiver program.

(4) A Michelle P. waiver provider shall inform a Michelle P. ***waiver*** recipient or his legal representative of the choice to receive:

(a) Michelle P. waiver services; or

(b) Institutional services.

(5) An eligible Michelle P. ***waiver*** recipient or the recipient's legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.

(6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. ***waiver[~~service~~]*** recipient's:

(a) Termination from the Michelle P. waiver program; or

(b)1. Admission to an ICF-IID[~~ICF-MR-DD~~] or nursing facility for less than sixty (60) consecutive days; or

2. Return to the Michelle P. waiver program from an ICF-IID[~~ICF-MR-DD~~] or nursing facility within sixty (60) consecutive days;

(c) Admission to a hospital; or

(d) Transfer to another waiver program within the department.

(7) Involuntary termination of a service to a Michelle P. ***waiver*** recipient by a Michelle P. ***waiver*** provider shall require:

(a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24 to the department at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the recipient with the name, address, and telephone number of each current provider in the state;

2. Provide assistance to the recipient in making contact with another provider;

3. Arrange transportation for a requested visit to a provider site;

4. Provide a copy of pertinent information to the recipient or legal representative;

5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;

6. Continue to provide supports until alternative services are secured; and

7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria. (1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

(a) Requires physical or environmental management or rehabilitation and:

1. Has a developmental disability or significantly sub-average intellectual functioning;

2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:

a. Learning fundamental living skills;

b. Obtaining educational experiences which will be useful in self-supporting activities; or

c. Increasing awareness of his or her environment; or

3. Has a primary psychiatric diagnosis if:

a. ***The individual possesses[Possessing]*** care needs listed in subparagraph 1 or 2 of this paragraph;

b. The individual's mental care needs are adequately handled in an ICF-IID[~~ICF-MR-DD~~]; and

c. The individual does not require psychiatric inpatient treatment***; or[.]***

(b) Has a developmental disability and meets the:

1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or

2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.

(3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6.***[Enrollment. (1) The department shall enroll an individual on a 1st priority basis if the individual:***

(a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and

(b) Meets the eligibility criteria established in Section 4 of this administrative regulation.

(2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.

(3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.

(4) The number of individuals enrolled and receiving services in][~~department shall enroll into~~]***[the Michelle P. waiver program shall not exceed the limit of individuals established for the program by the Centers for Medicare and Medicaid Services]***[~~no more than:~~

~~(a) 3,000 individuals during the first state fiscal year (beginning July 1, 2008);~~

~~(b) A total of 4,500 individuals by the end of the second state fiscal year (June 30, 2010); and~~

~~(c) A total of 6,000 individuals by the end of the third state fiscal year (June 30, 2011)~~]***[.***

Section 7.] Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. ***waiver*** recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. ***waiver*** recipient's family. A CDO service may be provided by a Michelle P. ***waiver*** recipient's family member; and

(d)***[Shall]*** Be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;

2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, ***APRN, or another qualified professional in the area of intellectual disabilities[QDIP, or ARNP]***;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) A case management service which ***shall***:

1.***[Shall]*** Consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;

2. ***[Shall]*** Be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly***[, except as allowed in subparagraph 8 of this paragraph]***;

b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. ***waiver*** recipient's home, in the ADHC center, or the adult day training provider's location***;[.]***

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care; and

d. Meet the requirements of subsection (4) of this section;

3.***[~~Shall~~]*** Not include a group conference;

4. ***[~~Shall~~]*** Include development of a plan of care that shall:

a. Be completed on the MAP 109 using Person Centered Planning: Guiding Principles;

b. Reflect the needs of the Michelle P. ***waiver*** recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of the Michelle P. waiver service level of care;

5.***[~~Shall~~]*** Include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative;

6.***[~~Shall~~]*** Include requiring a Michelle P. ***waiver*** recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and

7.***[~~Shall~~]*** Not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient**;**[~~, except as allowed in subparagraph 8 of this paragraph; and~~

~~8. Contingent upon approval by the Centers for Medicare and Medicaid Services and expiring January 1, 2011, may be provided by an agency which also provides any other Michelle P. waiver service to the recipient if the agency meets the provider qualifications established in Section 2 of this administrative regulation and:~~

~~a. Provided case management to the recipient in another of the department's waiver programs prior to the establishment of the Michelle P. waiver service program; or~~

~~b. Provided other services via the Cabinet for Health and Family Services to the recipient prior to the establishment of the Michelle P. waiver service program~~]***[.]***

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct***[-]***care staff;

2. Be provided to a Michelle P. waiver recipient:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;

2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct***[-]***care staff;

4. Be provided to a Michelle P. ***waiver*** recipient:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

(f) An attendant care service which shall consist of hands-on care that is:

1. Provided by direct***[-]***care staff to a Michelle P. waiver recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;

2. Not of a general housekeeping nature;

3. Not provided to a Michelle P. waiver recipient who is receiving any of the following Michelle P. waiver services:

a. Personal care;

b. Homemaker;

c. ADHC;

d. Adult day training;

e. Community living supports; or

f. Supported employment; and

4. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Beginning and ending time of service;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:

1. Provided by direct***[-]***care staff who provide services at a level which appropriately and safely ***meets[~~meet~~]*** the medical needs of the Michelle P. waiver recipient;

2. Provided to a Michelle P. waiver recipient who has care needs beyond normal ***babysitting[~~baby sitting~~]***;

3. Used no less than every six (6) months;

4. Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age ***twenty-one (21)[~~21 (twenty-one)~~]*** in an ADHC center; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b.**[~~Progression, regression, and maintenance toward outcomes identified in the plan of care;~~**

~~c.~~] The signature, date of signature, and title of the individual preparing the note; and

c.[~~d.~~] The beginning and ending time of service;

(h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the Michelle P. waiver recipient's disability and needs;

3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;

4. Be submitted on form MAP***[-]***95 for prior authorization; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers; **and**

b.**[~~Progression, regression, and maintenance toward outcomes identified in the plan of care; and~~**

~~c.~~**]** The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy which shall be:

1. A physician ordered evaluation of a Michelle P. waiver recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver recipient in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;

3. Training of other Michelle P. waiver providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented with a detailed staff note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy which shall:

1. Be a physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;

2. Be physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be exclusive of maintenance or the prevention of regression;

5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

6. Be documented with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression or lack of progression toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(k) Speech therapy which shall:

1. Be a physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;

2. Be a physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be provided by a speech-language pathologist; and

5. Be documented with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(l) An adult day training service which shall:

1. Support the Michelle P. waiver recipient in daily, meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a community setting which may:

a. Be a fixed location; or

b. Occur in public venues;

4. Not be diversional in nature;

5. If provided on site:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or

c. Prepare the recipient for transition from school to work or adult support services;

6. If provided off site:

a. Include services provided in a variety of community settings;

b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Be designed to result in increased ability to access community resources without paid supports;

d. Provide the opportunity for the recipient to be involved with other members of the general population; and

e. Be provided as:

(i) An enclave or group approach to training in which recipients work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization ***is[,~~ be~~]*** paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;

10.a. Be provided to recipients age twenty-two (22) or older; or

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services; and

11. Be documented with:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service which shall:

1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Include attending to a recipient's personal care needs;

3. Be provided in a variety of settings;

4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the Michelle P. waiver recipient's file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented by:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the ***behavior support[~~behavioral~~]*** specialist;

b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a Michelle P. ***waiver*** recipient's progress which shall be accomplished by:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented by a detailed staff note which shall include:

a. The date of service;

b. The beginning and ending time; and

c. The signature, date of signature, and title of the ***behavior support[~~behavioral~~]*** specialist;

(o) An ADHC service which shall:

1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to ***Michelle P.[~~Medicaid~~]*** waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:

a. A physician;

b. A physician assistant;

c. An ***APRN[~~ARNP~~]***;

d. An RN;

e. An LPN;

f. An activities director;

g. A physical therapist;

h. A physical therapist assistant;

i. An occupational therapist;

j. An occupational ***therapy[~~therapist~~]*** assistant;

k. A speech***-language*** pathologist;

l. A social worker;

m. A nutritionist;

n. A health aide;

o. An LPCC;

p. An LMFT;

q. A certified psychologist with autonomous functioning; or

r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment. The plan of treatment shall:

a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;

b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

c. Be developed annually from information on the MAP 351 and revised as needed; and

(p) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-one basis;

5. Not be provided at an adult day-training or children's day***[-]*** habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature**,** and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training***[,]*** and supported employment.

(4) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

1. A ***qualified professional in the area of intellectual disabilities[~~QIDP~~]***;

2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;

3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

4. A qualified social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

7. A certified psychologist ***or licensed psychological associate*** who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or

8. A licensed psychological practitioner who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

(b) Be an RN;

(c) Be an LPN;

(d) Be a qualified social worker;

(e) Be an LMFT;***[;]***

(f) Be an LPCC;

(g) Be a ***licensed[~~certified~~]*** psychologist; or

(h) Be a licensed psychological practitioner.

Section ***7.[~~8.~~]*** Consumer-Directed Option. (1) Covered services and supports provided to a Michelle P. waiver recipient participating in CDO shall be nonmedical and include:

(a) A home and community support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not ***be*** diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; and

5. Include:

a. Assistance, support**,** or training in activities including meal preparation, laundry, or routine household care ***or[~~of~~]*** maintenance;

b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;

c. Reminding, observing, or monitoring of medications;

d. Nonmedical care which does not require a nurse ***or[~~of~~]*** physician intervention;

e. Respite; or

f. Socialization, relationship building, leisure choice**,** or participation in generic community activities***;[.]***

(b) Goods and services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints;

(c) A community day support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; or

(d) Financial management which shall:

1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

2. Include payroll processing associated with the individuals hired by a consumer or consumer's representative;

3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;

4. Be performed by an entity:

a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

b. With at least two (2) years of experience working with individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;

5. Include preparing fiscal accounting and expenditure reports for:

a. A consumer or consumer's representative; and

b. The department.

(2) To be covered, a CDO service shall be specified in a plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO Michelle P**.** waiver setting, except that respite may be provided in excess of the cap established in Section 12(2) of this administrative regulation if:

(a) Necessary per the consumer's plan of care; and

(b) Approved by the department in accordance with subsection (13) of this section.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP**-**2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP**-**2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists;

(b) The consumer fails to pay patient liability;

(c) The recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety and welfare due to being left alone without a caregiver present; or

(d) The recipient, caregiver, family, or guardian ***threatens or intimidates[~~threaten or intimidate~~]*** a support broker or other CDO staff.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) ***Except for a termination required by subsection (7) of this section,*** prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete, and submit to the department, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section ***14[~~13~~]*** of this administrative regulation.

(11) A CDO provider shall:

(a) Be selected by the consumer;

(b) Submit a completed Kentucky Consumer Directed Option Employee***/***Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the consumer, consumer representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the consumer;

(h) Submit to a criminal background check;

(i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime***[~~as defined in KRS 17.165(1) or (3)~~]***;

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a twelve (12) month budget for a consumer based on the consumer's plan of care.

(b) A consumer's twelve (12) month budget shall not exceed $40,000 unless:

1. The consumer's support broker requests a budget adjustment to a level higher than $40,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the consumer's health, safety, and welfare; and

4. If a significant change has occurred in the recipient's:

a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement, resulting in the recipient's relocation.

(d) A consumer's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the consumer's plan of care and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-CDO) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using ***the*** Person***[-]***Centered Planning***: Guiding*** Principles.

(16)(a) A support broker or case manager may conduct an assessment or reassessment for a CDO participant***[~~; and~~]***

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section ***8.[~~9.~~]*** Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section shall:

(a) Be an overall limit applied to all services whether CDO services, Michelle P. waiver services not provided via CDO, or a combination of CDO and Michelle P. waiver services; and

(b)***[~~Shall~~]*** Equal $63,000 per year.

Section ***9.[~~10.~~]*** Incident Reporting Process. (1) An incident shall be documented on ***a Michelle P. Waiver[~~an~~]*** Incident Report Form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency***;[~~.~~]***

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraints;

3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;

4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours;

b. The guardian within twenty-four (24) hours;

c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death***;[~~.~~]***

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;

c. The guardian within eight (8) hours of discovery; and

d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and

follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

(a) The recipient's current plan of care;

(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;

(c) The recipient's current crisis plan;

(d) Medication administration review forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider;

(g) A coroner's report when received; and

(h) If performed, an autopsy report when received.***[(4) All medication errors shall be reported to the department on a Michelle P. Waiver Medication Error Report by the 15th of the following month.]***

Section ***10.[11.]*** Michelle P. Waiver Program Waiting List. (1)(a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:

1. In accordance with subsection (2) of this section; and

2.***[Which shall be]*** Maintained by the department.

(b) Each slot for the Michelle P. Waiver Program shall be contingent upon:

1. Biennium budget funding;

2. Federal financial participation; and

3. Centers for Medicare and Medicaid Services approval.

(2)***(a)*** For an individual to be placed on the Michelle P. Waiver Program waiting list, the***[:***

(a)] individual shall submit to the department a completed Application for MPW ***Waiver Waiting List.[Services; and]***

(b)1. ***The*** department shall place the individual on the waiting list if the department confirms that the MAP-621, Application for MPW ***Waiver Waiting List[Services]***, has been correctly completed.

2. If the department determines that a MAP-621, Application for MPW ***Waiver Waiting List[Services]***, has not been completed correctly, the department shall return the form to the applicant notifying the applicant of the incorrectness or missing information.

(3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that ***each[the]*** application is received and validated by the department.

(4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:

(a) Applicant; or

(b) Applicant's legal representative.

(5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:

(a) Verify the accuracy of the individual's information; and

(b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.

(6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:

(a)***[After a documented attempt, the department is unable to contact or locate the individual or the individual's legal representative;***

(b)] The individual is deceased; or

(b)[(c)] The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and

2. Does not request to remain on the Michelle P. Waiver Program waiting list.

(7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:

(a) Lose his or her current position on the waiting list; and

(b) Be moved to the bottom of the waiting list.

(8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:

(a) The individual or the individual's legal representative; and

(b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

(9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.

(10)*(a)* An individual who is*[:*

(a) At least twenty-one (21) years of age and who is] **placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify.**

(b) An individual who is[; or

(b)] **under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall *also* be informed about*[:***

1. And told how to apply for Medicaid state plan services for which the individual might qualify; and

2.] **Early and Periodic Screening, Diagnostic, and Treatment services.**

Section ***11.[12.]*** Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A ***[home health]*** provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department***, immediately upon request,*** with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature***[immediately upon request]***.

Section ***12.[13.]***[12.] Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:

(a) Homemaker;

(b) Personal care;

(c) Attendant care;

(d) Supported employment;

(e) Adult day health care;

(f) Adult day training;

(g) Community living supports;

(h) Physical therapy;

(i) Occupational therapy;

(j) Speech therapy; and

(k) Behavior supports.

(2) Respite services shall not exceed $4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed $500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Upper Payment Rate Limit	Unit of Service
Case Management	$50.00	15 minutes
Respite	$4,000 per calendar year	15 minutes
Homemaker	$6.50	15 minutes
Personal Care	$7.50	15 minutes
Attendant Care	$2.90	15 minutes
Supported Employment	$5.54	15 minutes
Adult Day Health Care	$2.75	15 minutes
Adult Day Training	$2.75	15 minutes
Community Living Supports	$5.54	15 minutes
Physical Therapy	$22.17	15 minutes
Occupational Therapy	$22.17	15 minutes
Speech Therapy	$22.17	15 minutes
Behavior Supports	$33.25	15 minutes
Environmental and Minor Home Adaptation	$500 per calendar year	
Financial Management	$12.50 (not to exceed eight (8) units or $100.00 per month)	15 minutes
Support Broker	$265.00	One (1) month

Section ***13.[14.]*** Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section ***14.[15.]***[13.] Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 907 KAR 1:563.

Section ***15.[16.]***[14.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Person Centered Planning: Guiding Principles", March 2005[edition];

(b) "MAP-24,***[The]*** Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for ***Medicaid[Community Based]*** Services Memorandum", **August 2008[February 2001]**[edition];

(c)[(f)] "MAP***[-]***95 Request for Equipment Form", June 2007[edition];

(d)[(g)] "MAP 109, Plan of Care/Prior Authorization for Waiver Services", **July 2008[March 2007]**[edition];

(e)[(h)] "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", **July 2008[January 2000]**[edition];

(f)[(i)] "MAP***[-]***351,***[The]*** Department for Medicaid Services, Medicaid Waiver Assessment", **July 2008[March 2007]**[edition];

(g)[(j)] "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", **July 2008[March 2007]**[, edition];

(h)[(k)] "MAP***[-]***10, Waiver Services ***Physician's Recommendation***", **August 2014[March 2007]**[edition];

(i)[(l)] "***[The]***Kentucky Consumer Directed Option Employee/Provider Contract", **August 2010[May 4, 2007]**[edition];

(j)[(m)] "**Michelle P. Waiver** Incident Report Form", **May 2013[April 2, 2007]**[edition]; **and**[and]

(k)[(n)]**["Michelle P. Waiver Medication Error Report", November 19, 2008; and**

(l)] "MAP-621 ***Application for MPW Waiver Waiting List", February[Michelle P. Waiver Application Form", January]*** 2014[edition].

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

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 11, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 8:200. Microbiological monitoring.

RELATES TO: KRS 224.10-110, 40 C.F.R. 141.21, 141.52, 141.63, **141.851 - 861**[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.21, 42 U.S.C. 300f-300j-26[~~, EO 2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) requires the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use.[~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~] This administrative regulation establishes a schedule and method for sampling drinking water to test for bacteriological contaminants,[~~and~~] establishes maximum contaminant levels for bacteria, and establishes[~~. This administrative regulation also specifies~~] requirements if tests show maximum contaminant levels have been exceeded.[~~This administrative regulation is more stringent than the corresponding federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be taken each month.~~]

Section 1. A "public water system" as defined by 40 C.F.R. 141.2", shall meet the requirements established in 40 C.F.R. 141.21, 141.52, and 141.63[~~except that a public water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation~~].

Section 2. Beginning January 1, 2016, a public water system shall comply with the requirements established in 40 C.F.R. 141.851 through 141.861, **except that a sample site plan required by 40 C.F.R. 141.853 shall be submitted to the cabinet no later than December 31, 2015. A semipublic water system shall take a minimum of one (1) total coliform bacteria sample each month the system is in operation**[~~A semipublic water system shall take a minimum of two (2) total coliform bacteria samples each month the system is in operation~~].

Section 3. Population served shall be determined by the appropriate method established in this section. (1) A **"community water system", as defined by 40 C.F.R. 141.2, and a "semipublic water system", as defined by 401 KAR 8:010,**[~~**supplier of water serving an area defined by an official census count or population projection**~~] shall:

(a) Use the most recent **decennial** census count **conducted by the United States Census Bureau;**[~~**or serviceable population determined by the cabinet; and**~~]

(b) **Use the serviceable population established by the Water Resources Infrastructure System database located at http://kia.ky.gov/wris/;**

(c) Multiply the number of service connections by 2.69; or

(d) Utilize a method mutually agreed upon by a community or semipublic water system and the cabinet[~~**Provide the figure and its source in its Monthly Operating Report established in 401 KAR 8:020, Section 2(7) by the tenth day of the month following the determination**~~][~~official population projection~~].

(2)[~~If~~] A **"non-transient non-community public water system", as defined by 40 C.F.R. 141.2, shall use the actual population served.**

(3) A "transient non-community public water system", as defined by 40 C.F.R. 141.2, shall use the actual population served.

(4) A public water system shall provide the figure to the cabinet in its December Monthly Operating Report established in 401 KAR 8:020, Section 2(7), by the tenth day of the month following the determination.

(5) A semipublic water system shall immediately notify the cabinet in writing if the population served calculation changes its classification from a semipublic water system to another classification[~~**supplier of water serving**~~][serves][~~**an area without available or applicable official figures for population of the area served shall:**~~]

[~~**(a) Use the serviceable population determined by the cabinet; or**~~]

[~~**(b) Calculate**~~][~~,~~][~~**the population served according to the appropriate method established in this subsection.**~~]

[~~**1. A "community water system", as defined by 40 C.F.R. 141.2 shall calculate population served by multiplying the number of service connections by 2.78.**~~]

[~~**2. A "non-transient non-community water public water system", as defined by 40 C.F.R. 141.2 shall use the actual population served.**~~]

[~~**3. A "semipublic water system", as defined by 401 KAR 8:010 shall use the actual population served.**~~]

[~~**4. A "transient non-community public water system", as defined by 40 C.F.R. 141.2 shall use the greater of:**~~]

[~~**a. The number of service connections multiplied by 2.78; or**~~]

[~~**b. The actual population served**~~]][~~shall be considered to be the greater of:~~]

[~~(a) A factor of not less than 2.97 times the number of residential meters; or~~]

[~~(b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 12, 2014 at noon

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes monitoring requirements, analytical techniques and maximum levels for microbiological contaminants in water used for public consumption. The proposed amendments clarify reporting requirements, establish a maximum contaminant level for E. Coli which triggers additional assessments, requires public water systems to identify sanitary problems and take corrective action, and establishes more accurate methodology in calculating "population served" based on the most recent census information.

(b) The necessity of this administrative regulation: This administrative regulation requires public water systems to monitor coliform levels and take corrective action should an exceedance occur to assure microbiological purity of drinking water which is essential to protect public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the Cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes limits on microbiological contaminants in drinking water and decreases the pathways by which pathogenic contaminants can enter drinking water systems which are essential to protect public health.

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

(a) How the amendment will change this existing administrative regulation: The substantive requirements of the existing regulations remain unchanged. The amendments made after comments reduced the multiplier in Section 3 from 2.78 to 2.69 which more accurately reflects the population served, and specifically allows systems to use the Water Resources Information System to report population served. These changes give systems more flexibility in reporting. The amendments reinstate language that was inadvertently deleted regarding sampling for semipublic water systems, and reduces testing for those systems from twice per month to once per month, aligning with federal requirements for small groundwater systems. The amendments also correct a reference to "supplier of water" for consistency with the C.F.R. and K.A.R. reference, and clarified sample site plan submission requirements.

(b) The necessity of the amendment to this administrative regulation: Adoption of 40 C.F.R 141.851 through 861 (the Revised Total Coliform Rule) is necessary for the Cabinet to maintain its primary authority to administer and enforce the Commonwealth's Safe Drinking Water program, pursuant to 40 C.F.R 142, Subpart B.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. Adoption of 40 C.F.R. 141.851 through 861 will make the administrative regulation conform exactly to federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments clarify sampling and reporting requirements, allow for flexibility and more accurate calculation of population served, and maintain consistency with authorizing statutes and federal requirements for Kentucky to maintain its primary authority in administering the federal Safe Drinking Water Act.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to 457 public and fifty (50) semipublic water systems which are commonly owned by city governments or organized under county governments. Other districts may, in some cases, have a public water system.

(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 substantive requirements of the existing regulations remain unchanged. Adoption of the Revised Total Coliform Rule (RTCR) will require public water systems to update sampling plans and perform assessments of, and corrections to, their drinking water systems should coliform exceedances occur. Seasonal systems will be required to perform and document start-up procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation remain largely unchanged. The Revised Total Coliform Rule formalizes assessment and correction practices that the majority of drinking water systems have been using.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will continue to provide drinking water that meets the microbiological requirements of the Safe Drinking Water Act. The assessments will provide the systems with information needed to correct any sanitary defects that could compromise microbiological quality. Additionally, reducing monitoring requirements for public water systems with a population of less than 1,000 will result in a potential cost savings for sixty-two (62) systems of approximately $240/year.

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

(a) Initially: The cabinet does not anticipate significant additional personnel time or funding to implement the revised regulation. Any assessments performed by division personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period.

(b) On a continuing basis: The cabinet does not anticipate significant additional personnel time or funding to implement the revised regulation. Any assessments performed by Cabinet personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the Safe Water Drinking Act.

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

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

(9) TIERING: Is tiering applied? Yes. The numbers of required samples for public water systems differs based on the size of the population served. Fewer samples are required for smaller, non-community public water systems than for large public water systems. Additionally, reduced monitoring (quarterly and annually) may be available for systems that use only groundwater as a source, serve a population of 1,000 or less, and meet certain additional criteria.

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 applies to public and semipublic water systems. Public water systems are commonly owned by city governments or organized under county governments. Semipublic water systems may be owned by individuals. Other districts may, in some cases, have a water system.

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(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.21, 141.52, and 141.63 establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants. Adoption of 40 C.F.R. 141.851 through 861 (the Revised Total Coliform Rule or RTCR) is necessary for the Cabinet to maintain its primary authority to administer and enforce the Commonwealth's Safe Drinking Water program, pursuant to 40 C.F.R. 142, Subpart B.

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

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

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

for local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet does not anticipate significant additional personnel time or funding to administer the revised regulation. Any assessments performed by division personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period. Public water systems with a population of less than 1,000 will have reduced monitoring requirements which will result in a potential cost savings for sixty-two (62) systems of approximately $240/year.

(d) How much will it cost to administer this program for subsequent years? The cabinet does not anticipate significant additional personnel time or funding to administer the revised regulation. Any assessments performed by division personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period. Public water systems with a population of less than 1,000 will have reduced monitoring requirements which will result in a potential cost savings for sixty-two (62) systems of approximately $240/year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), 40 C.F.R. 141.21, 141.52, and 141.63

2. State compliance standards. KRS 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.21, 141.52, 141.63 and 141.851-861_establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? At the request of industry, this regulation establishes an earlier compliance date of January 1, 2015, rather than March 1, 2015. The amendment to this regulation does not impose stricter or additional requirements than the federal regulations. The regulation does require at least one (1) microbiological test each month for most systems. This is a reduction of one (1) test per month for sixty-two (62) public water systems which will save those systems approximately $240 per year.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. At the request of industry, this regulation establishes an earlier compliance date of January 1, 2015, rather than March 1, 2015. KRS 24.10-110 requires the cabinet to regulate semipublic as well as public water systems. The previous regulation required a minimum of two (2) bacteriological samples per month. The amended regulation requires one (1) microbiological test each month and immediate corrective action in the event of an exceedance. This combination is both reasonable and offers better protection for public health.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:008. License procedures and fee schedule.

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530, 216B.042(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and establish reasonable application fees for licenses[~~(1) requires the Cabinet for Health Services to exercise the licensure function for health facilities and services~~]. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1)[~~"Accredited hospital" means a hospital accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JACAHO) or the American Osteopathic Association (AOA).~~

~~(2)~~] "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.

(2)[~~(3)~~] "Cabinet" is defined by KRS 216B.015(6)[~~(5)~~].

(3) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.

(4)[~~"Inspecting agency" means the Office of the Inspector General, Cabinet for Health Services.~~

~~(5)~~] "Inspector General" means the Inspector General or designee.

(5)[~~(6)~~] "Variance" means the written approval of the Inspector General authorizing a health care facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) A[~~The~~] license required by KRS 216B.105(1) shall be conspicuously posted in a public area of the facility.

(2) An applicant for licensure as a health facility or service shall complete and submit to the Office of the Inspector General the appropriate application for licensure as follows:

(a) Application for License to Operate a Health Facility or Service;

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technological Service;

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home[~~An applicant for licensure shall file with the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, the appropriate application for licensure, as follows:~~

~~(a) Application for License to Operate a Family Care Home;~~

~~(b) Application for License to Operate a Long-term Care Facility;~~

~~(c) Application for License to Operate a Hospital;~~

~~(d) Application for License to Operate a Home Health Agency;~~

~~(e) Application for License to Operate a Special Health Clinic or Service;~~

~~(f) Application for License to Operate a Health Facility or Service;~~

~~(g) Application for Initial License to Operate a Critical Access Hospital (CAH);~~

~~(h) Application for Relicensure to Operate a Critical Access Hospital (CAH); or~~

~~(i) Application for a License to Operate a Residential Hospice Facility~~].

(3) An applicant for an initial license shall, as a condition precedent to licensure be in compliance with each[~~the~~] administrative regulation[~~regulations~~] applicable to the license requested, which shall be determined through an on-site inspection of the health facility.

(4) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b)1. A representative of the Office of Inspector General[~~inspecting agency~~] shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the facility is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3.**a.** Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the facility, or deny access to records relevant to the inspection**, unless deemed confidential by 42 U.S.C. 299b-22(a),** shall result in disciplinary action, including denial, revocation, **modification,** or suspension of the facility's license.

b. Denial, revocation, modification, or suspension of a facility's license shall be subject to appeal pursuant to KRS 216B.105.

(c) An inspection of a health facility or service licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility or service based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction[~~and pertinent facility records~~].

(5) Violations.

(a) The Office of Inspector General[~~inspecting agency~~] shall notify the health facility in writing of a regulatory violation identified during an inspection.

(b) The health facility shall submit to the Office of Inspector General[~~inspecting agency~~], within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or a person designated by the licensee and shall specify:

a. The date by which the violation shall be corrected;[~~.~~]

b. The specific measures utilized to correct the violation; and

c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General[~~inspecting agency~~] shall review the plan and notify the facility in writing of the decision to:

a. Accept the plan;

b. Not accept the plan; or

c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2b of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and

b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General[~~inspecting agency~~] shall review the amended plan of correction and notify the facility in writing of the decision to:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(6) A license shall:

(a) Expire one (1) year from the date of issuance, unless otherwise expressly provided in the license certificate; and

(b) Be renewed if the licensee:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action and

4. Unless exempted, has responded to requests from the cabinet[~~for Health Services, Department of Public Health~~] for:

a. Annual utilization surveys; and

b. Requests for information regarding health services provided.

(7) Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2)[~~2(1)(b)~~], more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(8) A new licensure application shall be filed within thirty (30) calendar days of the effective date[~~in the event~~] of a change of ownership. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(9) The licensee shall fully disclose to the cabinet the name, mailing[~~and~~] address, email address, and phone number, or a change in the name, mailing[~~or~~] address, email address, or phone number of:

(a) Each person having an ownership interest of twenty-five (25) percent or more in the facility; and

(b)1. Each officer or director of the corporation, if a facility is organized as a corporation; or

2. Each partner, if a facility is organized as a partnership.

(10) An unannounced inspection shall be conducted:

(a) In response to a credible, relevant complaint or allegation; and

(b) According to procedures established in subsection (4) of this section.

(11) A licensee[~~facility,~~] that does not have a pending adverse action, but fails to submit a completed licensure application annually[~~which has failed to renew its license on or before the expiration date~~] shall cease operating the health facility unless:

(a) The items required under subsection (6)(b) of this section have been tendered; and

(b) The Office of Inspector General[~~inspecting agency~~] has provided the facility with a notice granting temporary authority to operate pending submission of the application[~~completion of the renewal process~~].

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	$.10[~~.05~~] per sq. ft.
(initial through final)	$200[~~100~~] minimum
(b) All other health facilities plans and specifications review	$.10[~~.05~~] per sq. ft.
(initial through final)	$200[~~100~~] minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee[~~, including a renewal,~~] for health facilities and services shall be as follows:

License Type	Rate
(a) Freestanding[~~Alternative~~] birth center	$500[~~155~~]

(b) Alzheimer's nursing home	**For Alzheimer's nursing facilities with 50 beds or less, $750 + $25 per bed; For Alzheimer's nursing facilities with 51 or more beds,** $1,000 + $25 per bed[~~$15 per bed $155/minimum~~]
(c) Ambulatory surgical center	$750[~~270~~]
(d) Chemical dependency treatment service	$1,000 + $25 per bed [~~$15 per bed $155/minimum~~]
(e) Community mental health[~~and mental retardation~~] center	$1,500[~~$1,300~~]
(f) Day health care	$170[~~140~~]
(g) Family care home	$42[~~40~~]
(h) Group home for individuals with an intellectual or developmental disability [~~homes for the mentally retarded/ developmentally disabled~~]	$100[~~80~~]
(i) Health maintenance organization	$12[~~10~~] per 100 patients
(j) Home health agency	$500[~~140~~]
(k) Hospice	$500[~~35~~]
(l) Hospital	
1. Deemed[~~Accredited~~] hospital	**For deemed hospitals with 25 beds or less, $750 + $25 per bed; For deemed hospitals with 26 or more beds,** $1,000 + $25 per bed[~~$10 per bed $155/minimum~~]
2. Non-deemed[~~Nonaccredited~~] hospital	**For non-deemed hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed hospitals with 26 or more beds,** $1,000 + $25 per bed[~~$15 per bed $155/minimum~~]
(m) Intermediate care facility	**For intermediate care facilities with 50 beds or less, $750 + $25 per bed; For intermediate care facilities with 51 or more beds,** $1,000 + $25 per bed[~~$15 per bed $155/minimum~~]
(n) ICF/IID[~~ICF/MR~~] facility	**For ICFs/IID with 50 beds or less, $750 + $25 per bed; For ICFs/IID with 51 or more beds,** $1,000 + $25 per bed[~~$15 per bed $155/minimum~~]
(o) Network	$500[~~270~~]
(p) Nursing facility	**For nursing facilities with 50 beds or less, $750 + $25 per bed; For nursing facilities with 51 or more beds,** $1,000 + $25 per bed [~~$15 per bed $155/minimum~~]

(q) Nursing home	**For nursing homes with 50 beds or less, $750 + $25 per bed; For nursing homes with 51 or more beds,** $1,000 + $25 per bed [~~$15 per bed $155/minimum~~]
(r) Ambulatory care clinic	$500[~~270~~]
(s) Personal care home	$100 + $5 per bed [~~$4 per bed $80/minimum~~]
(t) Primary care center	$500 + $50 per extension[~~$270 $25 per satellite~~]
(u) Psychiatric hospital	
1. Deemed[~~Accredited~~] hospital	**For deemed psychiatric hospitals with 25 beds or less, $750 + $25 per bed; For deemed psychiatric hospitals with 26 or more beds,** $1,000 + $25 per bed [~~$10 per bed $155/minimum~~]
2. Non-deemed[~~Nonaccredited~~] hospital	**For non-deemed psychiatric hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed psychiatric hospitals with 26 or more beds,** $1,000 + $25 per bed[~~$15 per bed $155/minimum~~]
(v) Psychiatric residential treatment facility	$500[~~270~~]
(w) Rehabilitation agency	$300[~~$140~~]
(x) Renal dialysis facility	$350[~~35~~] per station
(y) Rural health clinic	$500[~~140~~]
(z)[~~Skilled nursing facility~~	~~$15 per bed $155/minimum~~
~~(aa)~~] Special health clinic	$500[~~270~~]
(aa)[~~(bb)~~] Specialized medical technology service	$500[~~270~~]
(bb)[~~(cc)~~] Mobile health service	$500[~~270~~]
(cc)[~~(dd)~~] Comprehensive physical rehabilitation hospital	
1. Deemed[~~Accredited~~] hospital	**For deemed hospitals with 25 beds or less, $750 + $25 per bed; For deemed hospitals with 26 or more beds,** $1,000 + $25 per bed[~~$10 per bed $155/minimum~~]
2. Non-deemed[~~Nonaccredited~~]	**For non-deemed hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed hospitals with 26 or more beds,** $1,000 + $25 per bed [~~$15 per bed $155/minimum~~]
(dd)[~~(ee)~~] Critical access hospital	**$750[~~$1,000~~]** + $25 per bed [~~$15 per bed $155/minimum~~]
(ee)[~~(ff)~~] Private duty nursing agency	$500[~~140~~]

(ff)[~~(gg)~~] Residential hospice facility	**$500[~~$1,000 + $25 per bed~~]**[~~$9 per bed $155 minimum~~]
[~~(hh) Group Homes for persons with acquired brain injuries~~	~~$80~~]
(gg)[~~(ii)~~] Prescribed Pediatric Extended Care Facility [~~Facilities~~]	$500[~~155~~]
(hh) Outpatient health care center	$500

(3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility **as set forth on its license** or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

(b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes **location and certificate of need approval is not required prior to relocation[~~locations~~]**, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2.**[~~Upon notification of a change in location,~~]** The Office of Inspector General shall conduct an on-site inspection **for a change of location** if the facility is one (1) of the following levels of care:

a. Freestanding birth center;
b. Alzheimer's nursing home;
c. Ambulatory surgical center;
d. Chemical dependency treatment service;
e. Group home;
f. Non-deemed hospital;
g. Intermediate care facility;
h. Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
i. Nursing facility;
j. Nursing home;
k. Personal care home;
l. Psychiatric residential treatment facility;
m. Renal dialysis facility;
n. Residential hospice facility; or
o. Outpatient health care clinic.

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health care facility to be in compliance with a facility specification requirement, even though the facility does not meet fully the applicable requirement, if:

(a) The Inspector General has previously granted, to the facility, a waiver for the requirement;

(b) The facility is licensed by the cabinet;

(c) The facility is in good standing as of the effective date of this administrative regulation; and

(d) The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

(a) The Inspector General shall notify the facility by certified mail of the findings and the need to comply with the applicable administrative regulations; and

(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health care facility a variance from a facility specification requirement if the facility establishes that the variance will:

(a) Improve the health, safety, or welfare of a resident or patient; or

(b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A facility shall submit a request for a variance, in writing, to the Office of [~~the~~] Inspector General[~~, Cabinet for Health Services~~]. The request shall include:

(a) All pertinent information about the facility;

(b) The specific provision of the administrative regulation affected;

(c) The specific reason for the request; and

(d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

(a) Improved the health, safety, or welfare of a patient or resident; or

(b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility, by certified mail, of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health care facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary[~~of the cabinet~~] within twenty (20) days of the date the health care facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A facility that has received a preliminary order to close or other notice of adverse action:

(a) Shall receive a duplicate license from the Office of Inspector General indicating that the facility has adverse action pending;

(b) Shall post the duplicate license in place of the original license;

(c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and

(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals **pursuant to KRS 216B.105** of the pending adverse action have been exhausted, the facility shall not have its:

(a) License renewed; or

(b) Duplicate license replaced.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form OIG 001, "Application for License to Operate a Health Facility or Service", June 2014 edition;

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", June 2014 edition;

(c) Form OIG 003, "Application for License to Operate a Hospital", June 2014 edition;

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", June 2014 edition;

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technology Service", June 2014 edition;

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", June 2014 edition;

(g) Form OIG 007, "Application for License to Operate a Family Care Home", June 2014 edition; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014[~~Application for License to~~

~~Operate a Family Care Home, OIG 4 (10/2002);~~

~~(b) Application for License to Operate a Long-term Care Facility, OIG 5 (10/2002);~~

~~(c) Application for License to Operate a Hospital, OIG 140 (10/2002);~~

~~(d) Application for License to Operate a Home Health Agency, OIG 141(10/2002);~~

~~(e) Application for License to Operate a Special Health Clinic or Service, OIG 142 (10/2002);~~

~~(f) Application for License to Operate a Health Facility or Service, OIG 144 (10/2002);~~

~~(g) Application for Initial License to Operate A Critical Access Hospital (CAH), OIG 242 (10/2002);~~

~~(h) Application for Relicensure to Operate A Critical Access Hospital (CAH), OIG 242A (10/2002); and~~

~~(i) Application for a License to Operate a Residential Hospice Facility, OIG 155 (10/2002)~~].

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

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Mynear, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish reasonable fees for the licensure of health facilities and promulgate administrative regulations necessary for proper administration of the licensure function.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the requirements for obtaining a license to operate a health facility and fees for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation as follows: Deletes the definition of "accredited hospital" and replaces this term with "deemed hospital"; Deletes the definition of "inspecting agency" and replaces this term with "Office of Inspector General" throughout; Updates applications for licensure as a health facility; Clarifies the Office of Inspector General's (OIG) authority to initiate disciplinary action against a facility's license if the facility denies access, including any effort to delay, interfere with, or obstruct an effort by OIG staff to enter the facility or deny access to records relevant to the OIG's inspection; Clarifies the scope of the OIG's investigative authority; Clarifies the timeframes by which a licensee must report a change in status, e.g. change of ownership, name, or location; and Increases the initial and annual health care facility licensure fees, as well as increases the fee for review of plans and specifications for construction or renovation of health facilities.

The amended after comments regulation makes the following changes in addition to the changes described above:

Reduces the proposed annual base fee for long-term care facilities with 50 beds or less from $1,000 to $750;

Reduces the proposed annual base fee for hospitals with 25 beds or less from $1,000 to $750;

Establishes a flat fee of $500 annually for residential hospice facilities and eliminates the proposed fee of $1,000 plus $25 per bed in accordance with recommendations made during the public comment period; and

Clarifies, in accordance with concerns expressed during the public comment period, that "denial of access" to facility documents requested by OIG surveyors as part of the inspection process does not include the denial of access to documents deemed confidential by 42 U.S.C. §299b-22(a);

Adds, in accordance with concerns expressed during the public comment period, a cross-reference to KRS 216B.105 in Section 2(4)(b)3 and Section 7(2) to clarify that adverse action taken by the OIG against a facility's license is appealable; and

Amends, in accordance with recommendations made during the public comment period, Section 3(3) to clarify that notification of a change in name applies to situations in which the facility changes its name "as set forth on its license." The OIG further amended this section to clarify that the 10-day time frame for notification of a "change of location" applies only to health facilities that do not require prior certificate of need approval.

(b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to increase licensure fees to a reasonable level commensurate with the cost of regulating health care facilities.

Justification for the licensure fee increase: Most of the licensure fees established in this administrative regulation have not increased since 2003, the year this administrative regulation was last amended. The fee for family care homes and group homes for individuals with intellectual/developmental disabilities has not increased since 1990. In addition to the retention of flat fees for the past eleven (11) years, nominal increases approved prior to 2003 have rendered the current licensure fees insufficient to offset the true cost of regulating health facilities.

While Kentucky regulates several levels of care that other states do not regulate, a comparison of available information revealed that several states impose significantly higher fees on hospitals, long-term care facilities, ambulatory surgical centers, hospice providers, and home health agencies. Also, some states charge a separate fee for changes of ownership, name, or location, and some states charge a fee to facilities under investigation as the result of a complaint. Kentucky does not impose fees for any of those additional functions.

In addition to the significantly higher fees charged by other states, another factor considered in the proposed fee increase relates to recent increases in staff workload. Specifically, while the number of annual inspections for long-term care facilities decreased by 212 from 2007 through 2012 in comparison to the previous five year period, the number of complaint investigations increased by 2,276. Along with these complaints, the number of immediate jeopardies (a crisis situation in which the health and safety of residents and/or patients are at risk) increased from thirty-six (36) cited during the period from 2001 to 2006 to a total of 223 immediate jeopardies cited from 2007 to 2012, representing a 619 percent increase. An immediate jeopardy situation requires multiple surveyors and working in close collaboration with staff in the OIG's Central Office, resulting in a more demanding workload involving more complex investigations.

As health care coverage expands, the anticipated increase in the demand for services, especially primary care, home health, substance abuse treatment, and mental health services is expected to result in an increased number of facilities and services subject to regulation by the OIG. Additional revenue is needed to satisfactorily staff for these surveys and any subsequent complaint

investigations.

Additionally, to achieve budget neutrality with respect to new levels of care created since this administrative regulation was last amended, the OIG has already begun the practice of establishing fees commensurate with the cost of regulating new facility types. For example, with each new licensure category required by law or otherwise established by administrative regulation since 2009 (i.e., limited services clinics, personal services agencies, specialty intermediate care clinics, and non-physician owned pain management facilities grandfathered by HB 1 from the 2012 Special Session), state law or regulation requires that the fee for each level of care be sufficient to cover the costs of regulatory oversight. The fees for these new categories of care range from $350 to $2,000 annually, and none of these levels are charged less than $500 initially.

Justification for increasing the fee for review of plans and specifications for construction or renovation of health facilities: The 2006 Kentucky Building Code provides that the fee charged by the Department for Housing, Buildings and Construction (HBC) for plan reviews of occupancy types that would include health facilities is 0.14 (14) cents per square foot/$250 minimum. By comparison, the proposal in this administrative regulation to increase the fee for plan reviews by the OIG's architects from 0.05 (5) cents per square foot/$100 minimum to 0.10 (10) cents per square foot/$200 minimum remains less that the current fee established in 2006 by HBC for similar reviews.

Conclusion: Because general fund dollars are used to implement this administrative regulation, increasing fees as proposed will help assure that funding is sufficient for the OIG to continue providing health facility licensure services in an effective manner to help ensure that Kentucky's citizens benefit from safe, adequate, and efficient medical care.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments administrative regulation conforms to the content of KRS 216B.042 by increasing licensure fees in an amount sufficient to assure that funding is available to offset the true cost of regulating health facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment and amended after comments administrative regulation will assist in the effective administration of KRS 216B.042 by increasing licensure fees to a reasonable level commensurate with the cost of regulating health care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The increase in initial and annual licensure fees proposed by this amended after comments administrative regulation affects the following health facilities licensed by the Office of Inspector General:

Licensure Type	Number of Facilities
Freestanding birth center	0
Alzheimer's nursing home	1
Ambulatory surgical center	33
Chemical dependency treatment service	4
Community mental health center	14
Day health care	106
Home health agency	109
Hospice	24
Deemed hospital	105
Nondeemed hospital	21
Intermediate care facility	9
ICF/IID facility	14
Network	5
Nursing facility	282
Nursing home	5
Ambulatory care clinic	14
Personal care home	154
Primary care center	146
Deemed psychiatric hospital	11
Nondeemed psychiatric hospital	2
Psychiatric residential treatment facility	24
Rehabilitation agency	290
Renal dialysis facility	107
Rural health clinic	164
Special health clinic	119
Specialized medical technology service	121
Mobile health service	146
Comprehensive physical rehabilitation hospital (deemed)	5
Comprehensive physical rehabilitation hospital (nondeemed)	1
Critical access hospital	29
Private duty nursing agency	10
Residential hospice facility	9
Prescribed pediatric extended care facility	7
Outpatient health care center	1

(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 licensed facilities identified in the response to question (3) will be subject to increased licensure fees as described in the response to (4)(b).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

License Type	Proposed Initial and Annual Licensure Fees
Freestanding birth center	None currently licensed at this time. However, increase from $155 to $500
Alzheimer's nursing home Intermediate care facility ICF/IID facility Nursing facility Nursing home Chemical dependency treatment service Non-deemed hospital Non-deemed psychiatric hospital Non-deemed comprehensive physical rehabilitation hospital Critical access hospital	For Alzheimer's nursing homes, intermediate care facilities, ICF/IID facilities, nursing facilities, and nursing homes with 50 beds or less, increase from $15 per bed/$155 minimum to $750 + $25 per bed. For Alzheimer's nursing homes, intermediate care facilities, ICF/IID facilities, nursing facilities, and nursing homes with 51 beds or more, increase from $15 per bed/$155 minimum to $1,000 + $25 per bed. For critical access hospitals, non-deemed hospitals, non-deemed psychiatric hospitals, and comprehensive physical rehabilitation hospitals with 25 beds or less, increase from $15 per bed/$155 minimum to $750 + $25 per bed. For non-deemed hospitals, non-deemed psychiatric hospitals, and comprehensive physical rehabilitation hospitals with 26 beds or more, increase from $15 per bed/$155 minimum to $1,000 + $25 per bed. For chemical dependency treatment service programs, increase from $15 per bed/$155

	minimum to $1,000 + $25 per bed.
Deemed hospital Deemed psychiatric hospital Deemed comprehensive physical rehabilitation hospital	For deemed hospitals, deemed psychiatric hospitals, and deemed comprehensive physical rehabilitation hospitals with 25 beds or less, increase from $10 per bed/$155 minimum to $750 + $25 per bed. For deemed hospitals, deemed psychiatric hospitals, and deemed comprehensive physical rehabilitation hospitals with 26 beds or more, increase from $10 per bed/$155 minimum to $1,000 + $25 per bed.
Ambulatory surgical center	Increase from $270 to $750
Community mental health center	Increase from $1,300 to $1,500
Day health care	Increase from $140 to $170
Family care home	Increase from $40 to $42
Group home for individuals with an intellectual disability	Increase from $80 to $100
Health maintenance organization	Increase from $10 to $12 per 100 patients
Home health agency Private duty nursing Network Rural health clinic	Increase from $140 to $500
Hospice	Increase from $35 to $500
Prescribed Pediatric Extended Care Facility	Increase from $155 to $500
Ambulatory care clinic Special health clinic Specialized medical technology service Mobile health service	Increase from $270 to $500
Personal care home	Increase from $4/bed, $80 minimum to $100 + $5 per bed
Primary care center	Increase from $270 + $25 per satellite to $500 + $50 per satellite (extension)
Psychiatric residential treatment facility	Increase from $270 to $500
Rehabilitation agency	Increase from $140 to $300
Renal dialysis facility	Increase from $35 per station to $350 per station
Residential hospice facility	Change from $9 per bed, $155 minimum to $500
Outpatient health care center	Establish at $500

In addition, health facilities required to submit facility specifications for review by the OIG's architects prior to construction or renovation will be subject to an increase in fees from 0.05 (5) cents per square foot/$100 minimum to 0.10 (10) cents per square foot/$200 minimum.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensure of health facilities and health services is a means to ensure that Kentucky's citizens have safe, adequate, and efficient medical care. Increasing licensure fees to a reasonable level that is commensurate with the costs of providing the licensure function will help ensure that licensing activities are not compromised due to insufficient funding.

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

(a) Initially: No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed increase in fees will help assure that funding is sufficient to offset the OIG's current cost of providing health facility licensure services, as well as address the continued inadequacy of available funding and significant reduction in General Fund allocations. Further, the Office of Inspector General anticipates that the proposed increase in initial and annual licensure fees will generate an estimated $1.4 additionally during the first year. The proposed increase in the fee for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional $87,400 during the first year.

(b) On a continuing basis: No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed increase in fees will help assure that funding is sufficient on an ongoing basis to offset the OIG's current cost of providing health facility licensure services. Further, the Office of Inspector General anticipates that the proposed increase in initial and annual health facility licensure fees will generate an estimated $1.4 on an ongoing basis. The proposed fee increase for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional $87,400 during subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment and amended after comments regulation increases the initial and annual health care facility licensure fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment and amended after comments regulation increases the initial and annual health care facility licensure fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact a health care facility licensed as one of the following: Alzheimer's nursing home, ambulatory surgical center, chemical dependency treatment service, community mental health center, day health center, family care home, group home for individuals with intellectual or developmental disabilities, health maintenance organization, home health agency, hospice, deemed hospital, non-deemed hospital, intermediate care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities network, nursing facility, nursing home, ambulatory care clinic, personal care home, primary care center, deemed psychiatric hospital, non-deemed psychiatric hospital, psychiatric residential treatment facility, rehabilitation agency, renal dialysis facility, rural health clinic, special health clinic, specialized medical technology service, mobile health service, deemed comprehensive physical rehabilitation hospital, non-deemed comprehensive physical rehabilitation hospital, critical access hospital, private duty nursing agency, residential hospice facility, prescribed pediatric extended care facility, or outpatient health care center.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Office of Inspector General anticipates that the proposed increase in initial and annual health facility licensure fees will generate an estimated $1.4 additionally during the first year. The

proposed fee increase for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional $87,400 during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Office of Inspector General anticipates that the proposed increase in initial and annual health facility licensure fees will generate an estimated $1.4 additionally per year. The proposed fee increase for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional $87,400 during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed fee increase will help assure that funding is sufficient to offset the OIG's current cost of providing health facility licensure services.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed fee increase will help assure that funding is sufficient on an ongoing basis to offset the OIG's current cost of providing health facility licensure services.

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:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20), 164.753(2), 34 C.F.R. 682.410(b)(9), 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095a

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(20) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1(1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence, [~~or~~] amount, or enforceability of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.[~~(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.~~]

Section 2.(1)(a) A hearing shall be provided if the debtor, on or before the 30th[~~15th~~] day following the date on which[~~of service of~~] the notice required by Section 1(3) of this administrative regulation is mailed, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing provided a decision is rendered in the case by the 60th day following receipt of the request for a hearing. In the event a final decision is not entered within the sixty (60) day period following receipt of a request for a hearing, the withholding order shall be suspended on the 61st day until such time as a final decision is entered.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) The hearing shall be held during regular business hours: Monday through Friday between the hours of 9 a.m. and 4 p.m. Eastern Standard Time.

(e) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding; or

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(f) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(g) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(h) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be

withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;

4. A statement of matters officially noticed;

5. Proffers of proof and objections and rulings thereon;

6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and

8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification, or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying, or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying, or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

b. Reject or modify, in whole or in part, the hearing officer's decision; or

c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

(i) In violation of constitutional or statutory provisions;

(ii) In excess of the statutory authority of the agency;

(iii) Without support of substantial evidence on the whole record;

(iv) Arbitrary, capricious, or characterized by abuse of discretion; or

(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

(b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue a subpoena for the production of a document or attendance of a witness.

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

b. Discuss the possibility of informal resolution of the dispute;

c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in this subsection.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and

notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;

2. Failure of the authority to:

a. Timely appoint a hearing officer; or

b. Respond to a request for inspection of records; or

3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;

2. Identify the parties to the action and the persons participating;

3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or

b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:

a. Statutes and administrative regulations;

b. Facts which are not in dispute; and

c. Generally-recognized technical or scientific facts;

2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence,[~~or~~] amount, or enforceability of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:

1. Consider the matter; and

2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts, or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted

documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the presumptions established in this paragraph.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if the debtor's available resources from all sources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size and state of residence. The poverty guidelines to be utilized for this purpose are the most recently published version promulgated by the Federal Department for Health and Human Services under the authority of 42 U.S.C. 9902(2).[~~:~~

~~a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:~~

~~Size of family unit~~	~~Poverty guideline~~
~~1~~	~~$11,490~~
~~2~~	~~$15,510~~
~~3~~	~~$19,530~~
~~4~~	~~$23,550~~
~~5~~	~~$27,57~~
~~6~~	~~$31,590~~
~~7~~	~~$35,610~~
~~8~~	~~$39,630~~
~~Each additional person~~	~~Add $4,020~~

~~b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:~~

~~Size of family unit~~	~~Poverty guideline~~
~~1~~	~~$14,350~~
~~2~~	~~$19,380~~
~~3~~	~~$24,410~~
~~4~~	~~$29,440~~
~~5~~	~~$34,470~~
~~6~~	~~$39,500~~
~~7~~	~~$44,530~~
~~8~~	~~$49,560~~
~~Each additional person~~	~~Add $5,030~~

~~c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:~~

~~Size of family unit~~	~~Poverty guideline~~
~~1~~	~~$13,230~~
~~2~~	~~$17,850~~
~~3~~	~~$22,470~~
~~4~~	~~$27,090~~
~~5~~	~~$31,710~~
~~6~~	~~$36,330~~
~~7~~	~~$40,950~~
~~8~~	~~$45,570~~
~~Each additional person~~	~~Add $4,620~~]

2. The debtor's actual monthly expenses shall be compared to the most recently revised Collection Financial Standards issued by the Internal Revenue Service based on the debtor's family size and state of residence. Actual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary.[~~a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwellings~~	~~1,068~~	~~1,170~~	~~1,589~~	~~2,789~~	~~3,390~~	~~4,494~~	~~4,962~~	~~7,108~~	~~13,516~~
~~Rented dwellings~~	~~4,530~~	~~3,803~~	~~3,778~~	~~3,854~~	~~4,191~~	~~4,581~~	~~4,265~~	~~3,984~~	~~2,670~~
~~Other lodging~~	~~343~~	~~54~~	~~248~~	~~92~~	~~338~~	~~321~~	~~358~~	~~607~~	~~1,488~~
~~Utilities, fuels, and public services~~	~~1,642~~	~~1,862~~	~~2,086~~	~~2,794~~	~~3,136~~	~~3,390~~	~~3,759~~	~~4,222~~	~~5,513~~
~~Household operations~~	~~288~~	~~330~~	~~3,001~~	~~488~~	~~586~~	~~778~~	~~696~~	~~957~~	~~2,143~~
~~Housekeeping and miscellaneous supplies~~	~~286~~	~~255~~	~~293~~	~~362~~	~~389~~	~~362~~	~~464~~	~~547~~	~~1,042~~
~~Household furnishings and equipment~~	~~463~~	~~452~~	~~380~~	~~540~~	~~793~~	~~940~~	~~1,071~~	~~1,666~~	~~2,563~~

~~Vehicle purchases (net outlay)~~	~~657~~	~~870~~	~~161~~	~~1,562~~	~~1,118~~	~~1,723~~	~~2,345~~	~~2,622~~	~~4,074~~
~~Gasoline and motor oil~~	~~693~~	~~711~~	~~647~~	~~962~~	~~1,442~~	~~1,678~~	~~2,229~~	~~2,357~~	~~3,313~~
~~Vehicle maintenance and repairs~~	~~217~~	~~264~~	~~245~~	~~426~~	~~435~~	~~572~~	~~783~~	~~846~~	~~1,301~~
~~Vehicle insurance~~	~~751~~	~~584~~	~~437~~	~~519~~	~~630~~	~~826~~	~~722~~	~~1,287~~	~~1,386~~
~~Vehicle rental, lease, license and other charges~~	~~148~~	~~1137~~	~~87~~	~~166~~	~~314~~	~~350~~	~~439~~	~~469~~	~~1,130~~
~~Public transportation~~	~~269~~	~~263~~	~~215~~	~~269~~	~~320~~	~~470~~	~~512~~	~~569~~	~~1,274~~

~~b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:~~

	~~New York~~	~~Philadelphia~~	~~Boston~~
~~Owned dwellings~~	~~9,312~~	~~8,158~~	~~8,260~~
~~Rented dwellings~~	~~5,360~~	~~3,218~~	~~3,499~~
~~Other lodging~~	~~807~~	~~631~~	~~1,104~~
~~Utilities, fuels, and public services~~	~~4,273~~	~~4,442~~	~~4,121~~
~~Household operations~~	~~1,384~~	~~1,201~~	~~1,569~~
~~Housekeeping and miscellaneous supplies~~	~~610~~	~~701~~	~~641~~
~~Household furnishings and equipment~~	~~1,408~~	~~1,460~~	~~1,859~~
~~Vehicle purchases (net outlay)~~	~~1,891~~	~~2,289~~	~~3,382~~
~~Gasoline and motor oil~~	~~2,006~~	~~2,147~~	~~2,489~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,813~~	~~2,457~~	~~2,579~~
~~Public transportation~~	~~1,133~~	~~444~~	~~678~~

~~3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~1,201~~	~~1,145~~	~~1,519~~	~~2,324~~	~~2,744~~	~~4,265~~	~~4,905~~	~~6,570~~	~~10,685~~
~~Rented dwellings~~	~~3,164~~	~~2,675~~	~~2,880~~	~~2,816~~	~~2,807~~	~~2,477~~	~~2,079~~	~~1,669~~	~~1,140~~
~~Other lodging~~	~~439~~	~~248~~	~~113~~	~~135~~	~~296~~	~~341~~	~~270~~	~~542~~	~~1,295~~
~~Utilities, fuels and public services~~	~~1,525~~	~~1,705~~	~~2,074~~	~~2,540~~	~~2,999~~	~~3,297~~	~~3,576~~	~~3,761~~	~~4,587~~
~~Household operations~~	~~286~~	~~220~~	~~305~~	~~490~~	~~471~~	~~539~~	~~720~~	~~834~~	~~1,739~~
~~Housekeeping and miscellaneous supplies~~	~~264~~	~~257~~	~~280~~	~~404~~	~~407~~	~~497~~	~~613~~	~~590~~	~~1,037~~
~~Household furnishings and equipment~~	~~537~~	~~355~~	~~380~~	~~585~~	~~709~~	~~856~~	~~1,085~~	~~1,555~~	~~2,556~~
~~Vehicle purchases (net outlay)~~	~~822~~	~~1,166~~	~~444~~	~~543~~	~~1,209~~	~~2,070~~	~~2,214~~	~~2,748~~	~~4,871~~
~~Gasoline and motor oil~~	~~1,024~~	~~988~~	~~1,080~~	~~1,267~~	~~1,792~~	~~2,109~~	~~2,395~~	~~2,683~~	~~3,501~~
~~Vehicle maintenance and repairs~~	~~212~~	~~245~~	~~349~~	~~432~~	~~589~~	~~582~~	~~798~~	~~819~~	~~1,213~~
~~Vehicle insurance~~	~~316~~	~~62~~	~~367~~	~~687~~	~~672~~	~~680~~	~~1,060~~	~~789~~	~~1,277~~
~~Vehicle lease, license, and other charges~~	~~140~~	~~99~~	~~137~~	~~160~~	~~251~~	~~280~~	~~324~~	~~352~~	~~755~~
~~Public transportation~~	~~139~~	~~147~~	~~151~~	~~184~~	~~191~~	~~219~~	~~225~~	~~364~~	~~943~~

~~b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:~~

	~~Chicago~~	~~Detroit~~	~~Minneapolis St. Paul~~	~~Cleveland~~
~~Owned dwelling~~	~~8,770~~	~~6,455~~	~~7,407~~	~~5,569~~
~~Rented dwelling~~	~~3,156~~	~~2,240~~	~~2,174~~	~~2,315~~

~~Other lodging~~	~~1,137~~	~~646~~	~~671~~	~~670~~
~~Utilities, fuels, and public services~~	~~3,981~~	~~4,036~~	~~3,315~~	~~3,434~~
~~Household operations~~	~~1,332~~	~~891~~	~~1,260~~	~~577~~
~~Housekeeping and miscellaneous supplies~~	~~666~~	~~631~~	~~883~~	~~728~~
~~Household furnishings and equipment~~	~~1,478~~	~~1,368~~	~~1,877~~	~~1,360~~
~~Vehicle purchases (net outlay)~~	~~2,624~~	~~2,705~~	~~2,908~~	~~2,598~~
~~Gasoline and motor oil~~	~~2,445~~	~~2,606~~	~~2,538~~	~~2,086~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,412~~	~~2,956~~	~~2,818~~	~~2,572~~
~~Public transportation~~	~~861~~	~~523~~	~~545~~	~~559~~

~~4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Owned dwelling~~	~~1,524~~	~~1,354~~	~~1,535~~	~~1,758~~	~~2,463~~	~~3,152~~	~~4,281~~	~~5,327~~	~~10,313~~
~~Rented dwelling~~	~~2,631~~	~~2,682~~	~~2,559~~	~~2,785~~	~~3,047~~	~~2,876~~	~~2,888~~	~~2,301~~	~~1,694~~
~~Other lodging~~	~~117~~	~~264~~	~~61~~	~~99~~	~~204~~	~~191~~	~~288~~	~~397~~	~~1,246~~
~~Utilities, fuels, and other charges~~	~~2,349~~	~~2,442~~	~~2,602~~	~~3,107~~	~~3,257~~	~~3,522~~	~~3,744~~	~~4,189~~	~~5,136~~
~~Household operations~~	~~301~~	~~308~~	~~340~~	~~456~~	~~547~~	~~696~~	~~755~~	~~957~~	~~1,811~~
~~Housekeeping and miscellaneous supplies~~	~~235~~	~~348~~	~~342~~	~~461~~	~~424~~	~~481~~	~~502~~	~~632~~	~~845~~
~~Household furnishings and equipment~~	~~534~~	~~612~~	~~513~~	~~704~~	~~849~~	~~1,166~~	~~1,104~~	~~1,382~~	~~2,529~~
~~Vehicle purchases (net outlay)~~	~~831~~	~~846~~	~~421~~	~~1,000~~	~~1,446~~	~~2,344~~	~~2,374~~	~~2,726~~	~~5,163~~
~~Gasoline and motor oil~~	~~1,115~~	~~1,098~~	~~1,206~~	~~1,625~~	~~1,944~~	~~2,188~~	~~2,625~~	~~2,878~~	~~3,658~~
~~Vehicle maintenance and repairs~~	~~268~~	~~348~~	~~305~~	~~376~~	~~469~~	~~480~~	~~649~~	~~752~~	~~1,170~~
~~Vehicle insurance~~	~~351~~	~~443~~	~~562~~	~~854~~	~~750~~	~~821~~	~~1,116~~	~~1,263~~	~~1,544~~
~~Vehicle lease, license, and other charges~~	~~128~~	~~83~~	~~105~~	~~132~~	~~153~~	~~219~~	~~261~~	~~263~~	~~584~~
~~Public transportation~~	~~125~~	~~86~~	~~100~~	~~116~~	~~148~~	~~147~~	~~213~~	~~276~~	~~734~~

~~b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:~~

	~~Washington, D.C.~~	~~Baltimore~~	~~Atlanta~~	~~Miami~~	~~Dallas Forth Worth~~	~~Houston~~
~~Owned dwelling~~	~~10,724~~	~~8,829~~	~~7,301~~	~~5,245~~	~~6,407~~	~~6,487~~
~~Rented dwelling~~	~~4,309~~	~~2,921~~	~~2,879~~	~~4,813~~	~~3,371~~	~~2,853~~
~~Other lodging~~	~~1,596~~	~~1,196~~	~~502~~	~~334~~	~~470~~	~~585~~
~~Utilities, fuels, and public services~~	~~4,254~~	~~4,424~~	~~4,348~~	~~3,496~~	~~4,461~~	~~4,472~~
~~Household operations~~	~~1,740~~	~~1,024~~	~~1,166~~	~~701~~	~~1,237~~	~~1,483~~
~~Housekeeping and miscellaneous supplies~~	~~720~~	~~687~~	~~724~~	~~458~~	~~739~~	~~620~~
~~Household furnishings and equipment~~	~~2,247~~	~~1,615~~	~~,1528~~	~~865~~	~~1,557~~	~~1,788~~
~~Vehicle purchases (net outlay)~~	~~3,176~~	~~1,962~~	~~2,761~~	~~1,149~~	~~3,175~~	~~2,542~~
~~Gasoline and motor oil~~	~~2,479~~	~~2,401~~	~~2,645~~	~~2,268~~	~~2,918~~	~~3,050~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~4,009~~	~~1,877~~	~~2,060~~	~~2,205~~	~~2,833~~	~~2,975~~
~~Public transportation~~	~~1,224~~	~~366~~	~~533~~	~~418~~	~~388~~	~~578~~

~~5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~3,393~~	~~1,433~~	~~1,892~~	~~2,070~~	~~2,634~~	~~4,211~~	~~5,089~~	~~7,039~~	~~13,133~~
~~Rented dwelling~~	~~3,532~~	~~4,604~~	~~4,693~~	~~4,594~~	~~4,840~~	~~4,640~~	~~5,061~~	~~4,510~~	~~3,421~~

Other lodging	509	199	128	153	249	378	438	527	1,541
Utilities, fuels, and public services	2,139	1,558	1,843	2,331	2,516	2,958	3,237	3,604	4,453
Household operations	989	442	518	723	818	783	953	1,008	2,253
Housekeeping and miscellaneous supplies	384	356	359	362	438	420	574	642	913
Household furnishings and equipment	692	596	671	696	764	1,166	1,094	1,708	2,803
Vehicle purchases (net outlay)	1,111	65	524	993	1,331	1,807	1,410	2,374	4,667
Gasoline and motor oil	1,100	1,121	1,157	1,323	1,655	2,097	2,203	2,735	3,269
Vehicle maintenance and repairs	402	460	411	577	515	664	746	941	1,425
Vehicle insurance	587	277	416	618	531	946	834	1,259	1,410
Vehicle lease, license, and other charges	195	158	168	234	221	373	373	471	849
Public transportation	292	196	201	224	229	427	445	539	1,257

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	6,808	11,051	8,075	8,557	5,879
Rented dwelling	6,235	6,594	6,694	3,631	2,772
Other lodging	731	1,537	441	1,424	584
Utilities, fuels, and public services	3,150	3,318	3,251	3,630	3,832
Household operations	1,447	2,201	1,210	1,677	1,098
Housekeeping and miscellaneous supplies	644	604	488	688	762
Household furnishings and equipment	1,420	1,684	1,480	1,951	1,714
Vehicle purchases (net outlay)	2,464	2,351	2,106	3,390	3,046
Gasoline and motor oil	2,615	2,340	2,673	2,411	2,409
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,079	3,417	2,651	2,502	2,546
Public transportation	626	1,241	469	1,182	371

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	2,547	2,537	2,388	2,671	2,989	3,535	4,136	4,750	6,672
Apparel	611	457	458	640	632	1,031	1,076	1,433	2,063
Health insurance	530	598	1,024	1,398	1,346	1,429	1,424	1,394	1,608
Medical services	293	186	253	412	460	439	523	555	1,043
Prescription drugs	186	175	325	410	340	387	306	344	392
Medical supplies	59	43	80	74	81	99	85	106	170
Personal care products and services	192	245	210	275	307	406	439	537	827
Education	1,780	914	393	390	563	406	268	540	1,314
Life and other personal insurance	58	45	89	110	275	142	159	219	333

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Food	3,978	3,520	3,956	3,993	4,198	4,952	4,911	6,156	8,740
Apparel	976	897	742	617	991	1,049	1,123	1,337	2,845

~~Health insurance~~	~~1,072~~	~~993~~	~~1,224~~	~~1,514~~	~~2,528~~	~~2,389~~	~~2,442~~	~~2,759~~	~~2,711~~
~~Medical services~~	~~361~~	~~46~~	~~430~~	~~416~~	~~674~~	~~771~~	~~829~~	~~848~~	~~1,269~~
~~Prescription Drugs~~	~~236~~	~~342~~	~~558~~	~~483~~	~~665~~	~~635~~	~~745~~	~~704~~	~~727~~
~~Medical supplies~~	~~26~~	~~51~~	~~46~~	~~78~~	~~113~~	~~128~~	~~146~~	~~127~~	~~238~~
~~Personal care products and services~~	~~299~~	~~281~~	~~317~~	~~379~~	~~410~~	~~446~~	~~506~~	~~609~~	~~1,012~~
~~Education~~	~~298~~	~~1,021~~	~~675~~	~~467~~	~~412~~	~~482~~	~~466~~	~~551~~	~~1,300~~
~~Life and other personal insurance~~	~~128~~	~~72~~	~~115~~	~~165~~	~~200~~	~~250~~	~~253~~	~~345~~	~~618~~

~~8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~6,056~~	~~5,636~~	~~4,730~~	~~4,636~~	~~5,172~~	~~6,078~~	~~5,868~~	~~6,671~~	~~9,509~~
~~Apparel~~	~~1,128~~	~~2,296~~	~~1,280~~	~~1,179~~	~~1,402~~	~~1,895~~	~~1,238~~	~~1,979~~	~~2,631~~
~~Health insurance~~	~~1,080~~	~~560~~	~~374~~	~~553~~	~~1,159~~	~~1,627~~	~~1,839~~	~~2,199~~	~~2,711~~
~~Medical services~~	~~173~~	~~155~~	~~233~~	~~93~~	~~563~~	~~495~~	~~491~~	~~1,189~~	~~1,276~~
~~Prescription drugs~~	~~315~~	~~172~~	~~220~~	~~283~~	~~309~~	~~375~~	~~441~~	~~523~~	~~650~~
~~Medical supplies~~	~~82~~	~~46~~	~~23~~	~~39~~	~~77~~	~~93~~	~~100~~	~~91~~	~~206~~
~~Personal care products and services~~	~~411~~	~~448~~	~~304~~	~~339~~	~~426~~	~~583~~	~~520~~	~~580~~	~~1,052~~
~~Education~~	~~2,621~~	~~1,172~~	~~152~~	~~266~~	~~315~~	~~410~~	~~805~~	~~783~~	~~2,588~~
~~Life and other personal insurance~~	~~209~~	~~103~~	~~37~~	~~112~~	~~127~~	~~176~~	~~219~~	~~320~~	~~725~~

~~9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $10,000~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~5,196~~	~~5,175~~	~~6,395~~	~~5,362~~	~~6,796~~	~~7,003~~	~~7,513~~	~~11,103~~
~~Apparel~~	~~2,749~~	~~1,255~~	~~2,364~~	~~1,547~~	~~1,616~~	~~1,665~~	~~1,935~~	~~3,094~~
~~Health insurance~~	~~578~~	~~299~~	~~614~~	~~746~~	~~1,367~~	~~1,515~~	~~1,901~~	~~2,585~~
~~Medical services~~	~~209~~	~~134~~	~~202~~	~~433~~	~~449~~	~~589~~	~~692~~	~~1,142~~
~~Prescription drugs~~	~~100~~	~~163~~	~~358~~	~~233~~	~~245~~	~~341~~	~~387~~	~~571~~
~~Medical supplies~~	~~37~~	~~78~~	~~10~~	~~49~~	~~108~~	~~99~~	~~103~~	~~179~~
~~Personal care products and services~~	~~407~~	~~280~~	~~255~~	~~457~~	~~442~~	~~529~~	~~681~~	~~1,054~~
~~Education~~	~~293~~	~~264~~	~~154~~	~~463~~	~~469~~	~~609~~	~~847~~	~~2,972~~
~~Life and other personal insurance~~	~~80~~	~~36~~	~~65~~	~~75~~	~~120~~	~~140~~	~~268~~	~~623~~

~~10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:~~

~~Debtor's Available Resources~~	~~Less than $10,000~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~6,161~~	~~6,009~~	~~6,880~~	~~7,143~~	~~7,716~~	~~7,232~~	~~8,518~~	~~11,702~~
~~Apparel~~	~~2,539~~	~~1,632~~	~~1,536~~	~~2,268~~	~~2,466~~	~~1,982~~	~~2,314~~	~~3,343~~
~~Health insurance~~	~~558~~	~~267~~	~~473~~	~~481~~	~~993~~	~~1,546~~	~~1,674~~	~~2,590~~
~~Medical services~~	~~490~~	~~222~~	~~153~~	~~366~~	~~399~~	~~607~~	~~711~~	~~1,160~~
~~Prescription drugs~~	~~299~~	~~126~~	~~190~~	~~228~~	~~303~~	~~348~~	~~366~~	~~598~~
~~Medical supplies~~	~~46~~	~~19~~	~~34~~	~~53~~	~~68~~	~~89~~	~~94~~	~~195~~
~~Personal care products and services~~	~~278~~	~~323~~	~~511~~	~~466~~	~~419~~	~~586~~	~~554~~	~~1,003~~
~~Education~~	~~411~~	~~161~~	~~185~~	~~374~~	~~480~~	~~665~~	~~575~~	~~2,652~~
~~Life and other personal insurance~~	~~102~~	~~41~~	~~49~~	~~58~~	~~149~~	~~215~~	~~233~~	~~581~~]

Section 5.(1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than fifteen (15) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6.(1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall provide a rebuttable presumption if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

LISA PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana L. Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt, as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(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 setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing 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 incorporates a number of changes to 34 C.F.R. §682.410, the federal regulation which sets forth the procedures the Authority is required to follow in collecting on defaulted guaranteed student loans through administrative wage garnishment. These changes were effective as of July 1, 2014. Specifically, the changes enable a defaulted borrower to challenge the enforceability of the debt through the administrative hearing process, extends the deadline for submitting a timely hearing request from twenty (20) days to thirty (30) days following the mailing of the First Notice Prior to Wage Withholding, and requires the Authority to release a garnishment order on the 61st day after receipt of an untimely request for hearing if a final decision has not been rendered within 60 days of receipt of the hearing request until such time as a final decision is rendered. Additionally, the amendment incorporates by reference the most recent version of the Collection Financial Standards for consumer expenditures published by the Internal Revenue Service. Per the newly updated federal regulation, these standards are to be used both by the Authority and any administrative hearing officer in evaluating a defaulted borrower's claim of extreme financial hardship based on the inadequacy of financial resources verses monthly household living expenses with respect to administrative wage garnishment. These standards replace the Consumer Expenditure Tables produced by the U.S. Department of Labor, Bureau of Labor Statistics previously utilized by the Authority in making hardship determinations in garnishment cases. Finally, per the relevant federal regulation, his amendment incorporates the most recent iteration of the poverty guidelines published by the Federal Department of Health and Human Services for evaluating extreme financial hardship claims based on income verses the poverty level.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to bring the regulation into alignment with the newly amended federal regulation authorizing the Authority utilize the administrative wage garnishment process to collect on defaulted student loans.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the requirements of federal and state law that authorize the Authority to promulgate regulations establishing the procedures for utilizing the administrative garnishment process in collection of defaulted student loans and the conducting of hearings pertaining thereto.

(d) How the amendment will assist in the effective administration of the statutes. The amendment to this administrative regulation will assist in the effective administration of the statutes by incorporating changes to the federal regulation governing the administrative wage garnishment process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers who have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During calendar year 2013, approximately 4,023 notices of wage garnishment were sent and received by student loan borrowers. During the same period, eighty-one (81) of those student loan borrowers requested a hearing regarding the wage garnishment. Of the eighty-one (81) hearing requests received, seventy-three (73) were requested on the basis of extreme financial hardship.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Those individuals identified in (3) above will be impacted by the amendment to this administrative regulation in that they will have an additional basis for challenging an administrative wage withholding order – enforceability of the debt-, will be granted a longer period of time in which to submit a timely hearing request, and will be entitled to release of a garnishment order if a decision is not rendered under a hearing request within sixty (60) days of receipt of the request for hearing. Additionally, any claim of extreme financial hardship will be evaluated under the most recent version of the Federal Poverty Guidelines and the current Federal Collection Financial Standards.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing financial information to the Authority are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing process.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. §1071 through 1087(2), §1095a, 34 C.F.R. §682.410(b)(9).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 U.S.C. §1095a, 34 C.F.R. §682.410(b)(9)

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and establishes the procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority. The Authority shall offer the borrower an opportunity for a hearing concerning the existence, the amount, or the enforceability of the debt, and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the Authority on or before

the 30th day following the Authority's mailing of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 30th day following the mailing of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. In the event that a final decision is not rendered within sixty (60) days of the receipt by the Authority of an untimely request for hearing, the Authority shall release the withholding order on the 61st day following receipt of the hearing request until such time as a final decision is entered. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above 125 percent of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the Collection Financial Standards published by the Internal Revenue Service, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority Board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least twelve (12) months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the Authority, as the designated state guarantee agency, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount, enforceability, or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. §1095a) and the applicable federal regulation (34 C.F.R. §682.410(b)(9)). Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute:

At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority. The Authority shall offer the borrower an opportunity for a hearing concerning the existence, the amount, or the enforceability of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the Authority may prescribe, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the Authority on or before the 30th day following the Authority's mailing of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 30th day following the mailing of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the Authority may prescribe, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. In the event that a final decision is not rendered within sixty (60) days of the receipt by the Authority of an untimely request for hearing, the Authority shall release the withholding order on the 61st day following receipt of the hearing request until such time as a final decision is entered. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least twelve (12) months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the Authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with

the procedures that the agency may prescribe." The Authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above 125 percent of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the Collection Financial Standards published by the Internal Revenue Service, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution; and

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course[~~; and~~

~~(c) Does not include courses from the Kentucky Virtual Campus~~].

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2.a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution;[~~and~~]

(c) Either:

1. Has its headquarters or main campus in Kentucky; or

2. If based outside of Kentucky, offers no more than forty-nine (49) percent of the courses offered in Kentucky as online courses; and

(d)1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(3).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa.

(10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years duration, offered by an educational institution which:

(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or

(b) For purposes of only the CAP Grant Program:

1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or

2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.

(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.

(12) "Federal act" is defined by KRS 164.740(7) and means 20 U.S.C. 1001 through 1146a.

(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24) and the number of quarter hours per academic year divided by thirty-six (36) and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(8).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;

2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and

3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:

a. 200 percent for a student enrolled in a two (2) year eligible program of study; or

b. 400 percent for a student enrolled in a four (4) year eligible program of study.

(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(19) "Online course" means a course any portion of the instruction for which is transmitted electronically over telecommunication lines or the Internet.

(20) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.

(21)[~~(20)~~] "Participating institution" is defined in KRS 164.740(13).

(22)[~~(21)~~] "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(23)[~~(22)~~] "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(24)[~~(23)~~] "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be a resident of Kentucky in accordance with the criteria established in 13 KAR 2:045.

(25)[~~(24)~~] "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

LORI PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in the administration of the College Access Program and Kentucky Tuition Grant programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with KRS 164.753(4), which requires the Authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by ensuring that those terms applicable to the KHEAA-administered grant programs are referenced accurately.

(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 defining those terms pertinent to the KHEAA-administered grant programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative by removing the reference to "Kentucky Virtual Campus" in the definition of "correspondence course," by enhancing the definition of "educational institution" for purposes of KHEAA-administered grant programs, and by adding "online course" as a defined term.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to accurately reflect that the "Kentucky Virtual Campus" is no longer utilized by post-secondary institutions since those entities have their own distance education portals. It is also necessary to require a post-secondary institution be headquartered in Kentucky or offer at least half of its course offerings on the ground in Kentucky in order to insure that Kentucky's limited grant funds are used to benefit students who are actually studying in-state. Finally, with the proliferation of online courses offered at virtually all post-secondary institutions, it is necessary to define "online course" for purposes of the KHEAA grant programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.780 authorizes the Authority to provide grants to assist financially needy undergraduate students to attend educational institutions in Kentucky. This amendment conforms to the content of the authorizing statutes by ensuring that relevant terms applicable to the KHEAA grant programs are accurately defined within the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that the definitions of those terms relevant to the KHEAA grant programs are complete and accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of fifty-eight (58) Kentucky postsecondary institutions participated in the CAP grant program in academic year 2014. A total of twenty-five (25) Kentucky postsecondary institutions participated in the KTG program in academic year 2014.

(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: The new and revised definitions contained in the amendment will be applicable to the above-referenced groups. In order to be eligible for disbursement of grant funds, an "educational institution" will need to be headquartered in Kentucky or offer at least half of its course offerings on the ground in Kentucky.

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

(a) Initially: The will be no cost to implement this amended administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:033. KTG student eligibility requirements.

RELATES TO: KRS 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.785
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.785 establishes the Kentucky Tuition Grant Program. KRS 164.748(4) and 164.753(4) require the Kentucky Higher Education Assistance Authority to promulgate an administrative regulation to administer grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation establishes student eligibility requirements for the Kentucky tuition grant program.

Section 1. Eligibility of Students. In order to qualify for disbursement of a Kentucky tuition grant, a student shall:
(1) Be a resident of the Commonwealth of Kentucky;
(2) Be enrolled as a full-time student in an eligible program of study;
(3) Be enrolled at an educational institution and not have previously earned a first baccalaureate or professional degree;
(4) Be determined by the authority, in accordance with 11 KAR 5:130 and 5:140, to have established financial need for the KTG;
(5) Have remaining KHEAA grant limit;
(6) Not receive financial assistance in excess of need to meet educational expenses;
(7) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
(8) Satisfy all financial obligations to the authority and to any educational institution. Ineligibility under this subsection may be waived for cause by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;
(9) Be a citizen of the United States or an eligible noncitizen;
(10) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus;[~~and~~]
(11) Be:
(a) Attending an eligible institution whose main campus or headquarters is located in Kentucky; or
(b) Attending at least fifty (50) percent of courses on-ground if enrolled at an eligible institution whose main campus or headquarters is not located in Kentucky; and
(12) Not be:
(a) In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;
(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and
(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

LISA PAYNE, Chair
APPROVED BY AGENCY: August 28, 2014
FILED WITH LRC: September 11, 2014 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the Kentucky Tuition Grant Program (KTG).
(b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the Kentucky Tuition Grant Program (KTG).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive KTG grant funds.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment enhances the student eligibility criteria by providing that a student must be attending an institution which has its headquarters or main campus located in Kentucky or, if not attending a Kentucky-based institution, must attend at least one half of his or her classes on-ground in Kentucky in order to be eligible for an award under this program.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to insure that Kentucky's limited grant funds are used to benefit students who are actually studying in the Commonwealth.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.780 authorizes the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend eligible private educational institutions in Kentucky. As part of KHEAA's administration of the KTG program, KHEAA is enhancing the student eligibility criteria as set forth in 2(a) above.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing certain eligibility requirements applicable to the KTG program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students who are otherwise eligible to receive KTG grant funds will be impacted. For academic year ending June 30, 2014, there were 54,420 applicants for KTG funds. A total of 11,643 students received KTG awards during that same period.
(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: The amendment will require applicants for KTG grants to either be enrolled in a Kentucky-based institution or attending at least half of their classes on-ground in Kentucky if enrolled at a non-Kentucky-based institution in addition to satisfying the other eligibility criteria for participation in this program.
(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: There will be no cost associated with this amendment.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs, and administrative costs are borne by the Authority through receipts of the Authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(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 was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all 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? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue. c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of student and not have previously earned a first baccalaureate or professional degree;

(3) Demonstrate financial need in accordance with 11 KAR 5:130 and 11 KAR 5:145 for CAP grant assistance;

(4) Have remaining KHEAA grant limit;

(5) Not receive financial assistance in excess of need to meet educational expenses;

(6) Maintain satisfactory progress in an eligible program of student according to the published standards and practices of the educational institution at which the student is enrolled;

(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KS 164.740 to 164.7891 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;

(8) Be a citizen of the United States or an eligible noncitizen;

(9) Be receiving at least part-time credit at an educational institution in an eligible program of study and paying at least part-time tuition and fees to that institution, if the student is studying abroad or off-campus;

(10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, as established by the Authority in 11 KAR 15:090, Section 5;[~~and~~]

(11) Be:

(a) Attending an eligible institution whose main campus or headquarters is located in Kentucky; or

(b) Attending at least fifty (50) percent of courses on-ground if enrolled at an eligible institution whose main campus or headquarters is not located in Kentucky; and

(12) Not be:

(a) In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;

(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U. S. C. 1070 to 1099.

LISA PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the College Access Program (CAP) grant.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the College Access Program (CAP) grant program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive CAP grant funds.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment enhances the student eligibility criteria by providing that a student must be attending an institution which has its headquarters or main campus located in Kentucky or, if not attending a Kentucky-based institution, must attend at least one half of his or her classes on-ground in Kentucky in order to be eligible for an award under this program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to insure that Kentucky's limited grant funds are used to benefit students who are actually studying in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.780 authorizes the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend eligible educational institutions in Kentucky. As part of KHEAA's administration of the CAP grant program, KHEAA is enhancing the student eligibility criteria as set forth in 2(a) above.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing certain eligibility requirements applicable to the CAP grant program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students who are otherwise eligible to receive CAP grant funds will be impacted. For academic year ending June 30, 2014, there were 290,316 applicants for CAP grant funds. A total of 39,752 students received CAP grant awards during that same period.

(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: The amendment will require applicants for CAP grants to either be enrolled in a Kentucky-based institution or attending at least half of their classes on-ground in Kentucky if enrolled at a non-Kentucky-based institution in addition to satisfying the other eligibility criteria for participation in this program.

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

(a) Initially: There will be no cost associated with this amendment.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs, and administrative costs are borne by the Authority through receipts of the Authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(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 was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all 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? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:170. Refund and repayment policy.

RELATES TO: KRS 164.748(4), (8), (12), (14), 164.753(4)(a), 164.7535, 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the apportionment of financial assistance refunds from institutions and repayment from students due to the KHEAA grant programs.

Section 1. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or may owe a repayment of cash disbursements made to the student for educational expenses.
(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with Sections 2 and 3 of this administrative regulation.

Section 2. (1) The institution shall adopt and implement a fair and equitable refund and repayment policy for financial assistance administered by the authority which shall be:
(a) A clear and conspicuous written statement;
(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;
(c) Consistently administered by the institution; and
(d) Made available to the authority upon request.
(2) The institution's refund and repayment policy for financial assistance administered by the authority may use the same methods and formulas for determining the amount of a refund or repayment as the institution uses for determining the return of federal financial assistance funds or the institution may adopt a separate and distinct policy that is based upon:
(a) The requirements of applicable state law; or
(b) The specific refund standards established by the institution's nationally recognized accrediting agency.
(3) The amount of the refund and repayment shall be determined in accordance with the educational institution's refund and repayment policy relative to financial assistance funds, except as provided in Section 3 of this administrative regulation.
(4) When the institution determines that a refund or repayment of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:
(a) CAP Grant;
(b) KTG;
(c) Go Higher Grant;
(d) Teacher Scholarship;
(e)[~~(d)~~] Kentucky Educational Excellence Scholarship;
(f) Kentucky Coal County College Completion Scholarship;
(g)[~~(e)~~] National Guard Tuition Assistance; and
(h)[~~(f)~~] Early Childhood Development Scholarship.

Section 3. When a KHEAA grant recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund or repayment of the KHEAA grant shall be required, notwithstanding any institutional policy to the contrary. If the institution is unable to document the student's last date of attendance, any KHEAA grant disbursement for that award period shall be subject to full refund and repayment. If, at any time, a KHEAA grant recipient's enrollment is terminated with no assessment of tuition and fees by the institution, then the full KHEAA grant shall be subject to cancellation, if not yet disbursed, or refund and repayment if the grant has already been disbursed.

Section 4. (1) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.
(2) Refunds by the institution and notification of student repayment due transmitted to the authority shall be accompanied by:
(a) The student's name and Social Security number;
(b) The reason for the refund or repayment;
(c) The date of enrollment status change;
(d) The semester and year; and
(e) The calculation used for determining the refund or repayment.

LISA PAYNE, Chair
APPROVED BY AGENCY: August 28, 2014
FILED WITH LRC: September 11, 2014 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the apportionment of financial assistance refunds from institutions and refunds from students due to KHEAA grant programs.
(b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. This administrative regulation is necessary in order to set forth the refund and repayment policy applicable to KHEAA grant programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes set forth in (1)(b) above by establishing a refund and repayment policy for KHEAA grant programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by clearly specifying the priority order for application of refunded or repaid student financial assistance.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by updating the priority order of programs for purposes of refunds initiated by participating institutions and repayments required from award recipients.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate recently established student assistance programs into the refund and repayment priority order.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing the priority order of programs for application of refunded award funds returned by an institution on behalf of an award recipient as well as for application of recipient repayment of funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing a more up-to-date priority order for application of refund and repayment of previously disbursed award funds under the grant programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any KHEAA grant recipient could potentially be impacted by the amendment to this administrative regulation anytime an institution has determined that a refund of student financial assistance is due to the authority on behalf of a student-recipient or in the event that a grant recipient has been required to repay funds previously disbursed by KHEAA.

(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: Since the priority order of programs to which refund or repayment of student financial assistance will be applied is being revised pursuant to this regulatory amendment, refunds or repayments will be applied in a different order for KHEAA grant recipients than previously applied.

(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: Same as (5)(a)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Grant awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs while administrative costs are borne by the Authority through receipts of the Authority.

(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 the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish any fees, nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all 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? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(4) "Eligible program of study" is defined in KRS 164.769(2)(b).

(5) "Expected family contribution" is defined in KRS 164.769(2)(c).

(6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:

(a) Required by KRS 161.030 and established in 16 KAR 7:010; and

(b) Also referenced as the beginning teacher internship.

(7) "Participating institution" is defined in KRS 164.769(2)(d).

(8) "Professional Teaching Certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.

(9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.

(10) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(11) "Semester" is defined in KRS 164.769(2)(f).

(12) "Summer term" is defined in KRS 164.769(2)(g).

(13) "Teaching" means performing continuous classroom instruction that:

(a) Is:

1. Pursuant to a professional teaching certificate in a position for which regular teacher certification is a prerequisite; or

2. During participation in the Kentucky Teacher Internship Program (KTIP); and

(b) Shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate or master's degree will be completed shall be:

(a) $210 per credit hour if the student is enrolled during a regular semester; or

(b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, and requires a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(c) If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) A recipient shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c) if the recipient:

(a) Has completed the program of study;

(b) Is providing qualified teaching service; and

(c) Is prohibited from participating in KTIP solely as a result of state budget limitations.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, refund of payments previously made shall not be given to the recipient.

Section 7. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section. (1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability;

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

Section 12. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending

order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Go Higher Grant;

(d) Teacher Scholarship;

(e)[~~(d)~~] Kentucky Educational Excellence Scholarship;

(f) Kentucky Coal County College Completion Scholarship;

(g)[~~(e)~~] National Guard tuition assistance; and

(h) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 13. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference. (1) " Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships awarded under KRS 164.769 administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: KRS 164.744(2) authorizes the Authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 administered by the Kentucky Higher Education Assistance Authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the Authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships under KRS 164.769. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 administered by the Kentucky Higher Education Assistance Authority.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by updating the priority order of programs for purposes of refunds initiated by participating institutions and repayments required from award recipients.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate recently established student assistance programs into the refund and repayment priority order.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing the priority order of programs for application of refunded award funds returned by an institution on behalf of an award recipient as well as for application of recipient repayment of funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing a more up-to-date priority order for refund and repayment of previously disbursed award funds under this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any Teacher Scholarship recipient could potentially be impacted by the amendment to this administrative regulation anytime an institution has determined that a refund of

financial assistance is due to the authority on behalf of a student-recipient or in the event that an award recipient is required to repay funds previously disbursed by KHEAA.

(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: Since the priority order of programs to which refund or repayment of student financial assistance will be applied is being revised pursuant to this regulatory amendment, refunds or repayments will be applied in a different order for Teacher Scholarship recipients than previously applied. Refunds will now be applied to Go Higher Grant awards before application to Teacher Scholarship awards.

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

(a) Initially: No cost.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Teacher Scholarship Awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs while administrative costs are borne by the Authority through receipts of the Authority.

(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 the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(2), 164.753(3), 164.769.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 15:060. Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure.

RELATES TO: KRS 164.7871-164.7885

STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) authorizes the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the conditions and procedures for refund or repayment of Kentucky Educational Excellence Scholarship funds.

Section 1. (1) If a student who earned a Kentucky Educational Excellence Scholarship (KEES) or supplemental award, fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status, the student may be due a refund of monies paid to the institution on behalf of that student or may owe a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received a Kentucky Educational Excellence Scholarship or supplemental award, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with Sections 2 and 3 of this administrative regulation.

Section 2. (1) The institution shall adopt and implement a fair and equitable refund and repayment policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(2) The institution's refund and repayment policy for financial assistance administered by the authority may use the same methods and formulas for determining the amount of a refund or repayment as the institution uses for determining the return of federal financial assistance funds or the institution may adopt a separate and distinct policy that is based upon:

(a) The requirements of applicable state law; or

(b) The specific refund standards established by the institution's nationally-recognized accrediting agency.

(3) The amount of the refund and repayment shall be determined in accordance with the educational institution's refund and repayment policy relative to financial assistance funds, except as provided in Section 3 of this administrative regulation.

(4) When the institution determines that a refund or repayment of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;
(b) KTG;
(c) Go Higher Grant;
(d) Teacher Scholarship;
(e)[~~(d)~~] Kentucky Educational Excellence Scholarship;
(f) Kentucky Coal County College Completion Scholarship;
(g)[~~(e)~~] National Guard tuition assistance; and
(h)[~~(f)~~] Early Childhood Development Scholarship;

Section 3. (1) When a KEES recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund or repayment of the KEES award shall be required, notwithstanding any institutional policy to the contrary.

(2) If the institution is unable to document the student's last date of attendance, any KEES disbursement for that award period shall be subject to full refund and repayment.

(3) If, at any time, a KEES recipient's enrollment is terminated with no assessment of tuition and fees by the institution, then the full KEES award shall be subject to cancellation, if not yet disbursed, or refund and repayment if the grant has already been disbursed.

Section 4. (1) If a student earned a Kentucky Educational Excellence Scholarship or supplemental award but did not earn the entire amount of award funds the participating institution applies to the student's account or disburses to the student for an academic term, the participating institution and the student shall be jointly and severally liable to repay to the authority the amount of the overpayment.

(2) If a student did not earn a Kentucky Educational Excellence Scholarship or supplemental award and the participating institution applies to that student's account or disburses to that student Kentucky Educational Excellence Scholarship or supplemental award funds for an academic term, the participating institution and the student shall be jointly and severally liable to repay to the authority the entire amount of Kentucky Educational Excellence Scholarship and supplemental award funds applied to that student's account and disbursed to that student.

Section 5. The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

Section 6. (1) If a refund is due from the participating institution or a repayment is due from a student, the participating institution shall transmit to the authority the refund and shall report:

(a) The student's name and Social Security number;
(b) The reason for the refund or repayment;
(c) The date of enrollment status change;
(d) The academic term and award period; and
(e) The calculation used for determining the refund or repayment.

(2) Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

LISA PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions and procedures for the refund or repayment of Kentucky Educational Excellence Scholarship funds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform procedures to be followed in the refund or repayment of state financial aid received through the Kentucky Educational Excellence Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) authorizes the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the Kentucky Educational Excellence Scholarship Program by establishing uniform procedures to be followed when refunding or repaying state financial aid received pursuant to the Kentucky Educational Excellence Scholarship 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 will change the existing administrative regulation by updating the priority order of programs for purposes of refunds initiated by participating institutions and repayments required from award recipients.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate recently established student assistance programs into the refund and repayment priority order.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) authorizes the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. The amendment conforms to the content of the authorizing statutes by enhancing the priority order of programs for application of refunded award funds returned by an institution on behalf of an award recipient as well as for application of recipient repayment of funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing a more up-to-date priority order for refund and repayment of previously disbursed award funds under this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any KEES program recipient could potentially be impacted by the amendment to this administrative regulation anytime an institution has determined that a refund of

financial assistance is due to the authority on behalf of a student-recipient or in the event that an award recipient is required to repay funds previously disbursed by KHEAA. In academic year 2013-14, KEES awards were disbursed to 68,935 students.

(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: Since the priority order of programs to which refund or repayment of student financial assistance will be applied is being revised pursuant to this regulatory amendment, refunds or repayments will be applied in a different order for KEES recipients than previously applied. Refunds will now be applied to Go Higher Grant awards before application to KEES awards.

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

(a Initially: There will be no cost to the authority in implementing the amendment to this administrative regulation.

(b) On a continuing basis: There will be no costs to the authority in implementing the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Kentucky Educational Excellence Scholarship Program comes from a trust fund consisting of net lottery proceeds as well as money from other sources, including, but not limited to, gifts, bequests, endowments and grants from the federal government.

(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 the amendment to 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 neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.7885(7).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.518, 164.740

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.

(4) "Capstone semester" means the culmination semester in an Interdisciplinary Early Childhood Education (IECE)/Early Childhood Program which:

(a) Requires additional hours of direct work with children; and

(b) May be listed as student teaching or a practicum.

(5) "Early childhood facility" means:

(a) A licensed Type I or a Type II child-care center defined in 922 KAR 2:110, Sections 1(14) and (15) that is located in Kentucky;

(b) A certified family child care home pursuant to KRS 199.8982 and 922 KAR 2:100 that is located in Kentucky; or

(c)[~~An organization approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer training in early childhood development; or~~

~~(d)~~] A developmentally appropriate preschool program defined in KRS 157.3175(2).

(6) "ECAC" means Early Childhood Advisory Council.

(7) "ECAC-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:

(a) An associate degree in early childhood education or baccalaureate degree in interdisciplinary early childhood education, or a related program that is approved by the Early Childhood Advisory Council; or

(b) The Kentucky Early Childhood Development Director's Certificate.

(8) "Eligible institution" is defined in KRS 164.740(3).

(9) "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(10) "Participating educational institution" means an eligible institution located in Kentucky that:

(a) Actively participates in the federal Pell Grant Program;

(b) Offers a scholarship program curriculum;

(c) Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and

(d)1. Is publicly operated; or

2.a. Is licensed by the Commonwealth of Kentucky;

b. Has operated for at least ten (10) years;

c. Offers a program of study not comprised solely of sectarian instruction; and

d. Admits as regular students only:

(i) High school graduates;

(ii) Recipients of a general equivalency diploma; or

(iii) Students transferring from another accredited degree granting institution.

(11) "Preschool associate teacher" means a classified employee who:

(a) Is employed by a local school district in a paraprofessional role to organize, manage, and provide direct instruction to children below primary school age under the supervision of a qualified professional; and

(b) Meets the requirements of 704 KAR 3:420.

(12) "Professional development counselor" means an individual with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established in 11 KAR Chapter 16.

(13) "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(14) "Scholarship" means an Early Childhood Development Scholarship.

(15) "Scholarship program curriculum" means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.

(16) "Teaching assistant" means an instructional aide in a public school preschool program as set forth in 704 KAR 3:410.

LISA PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions of terms used in the administration of the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define or reference certain statutory definitions of terms commonly used in the administration of the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining terms applicable to the Early Childhood Development Scholarship 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 will change the existing administrative regulation by removing organizations that offer training in early childhood development from the definition of "early childhood facility."

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to more accurately describe what constitutes an early childhood facility for purposes of this scholarship program.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by providing a more accurate definition of the term "early childhood facility" for purposes of the ECDS program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation enhances the administration of the authorizing statutes by revising one of the defined terms applicable to the program –"early childhood facility" - in order to more clearly reflect what currently constitutes an early childhood facility per the Governor's Office of Early Childhood.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed change would impact only those organizations that offer training in early childhood development and those employed by such entities.

(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: Those organizations that offer training in early childhood development, as opposed to those who provide actual early child care services, would be ineligible for participation in the Early Childhood Development Scholarship program. Likewise, those employed by such organizations would not be eligible for awards under this program. Based upon information provided by the Governor's Office of Early Childhood, the net impact would be negligible at best.

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

(a) Initially: There will be no cost associated with this amendment.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Funding for the Early Childhood Development Scholarship program is provided through money designated to the Commonwealth from the master settlement agreement signed November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 200 Ky. Acts ch. 549, Part XI.

(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 does not establish any fees or

directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all 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? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States;

2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

3. A high school graduate or a General Educational Development (GED) recipient;

4. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:

a. Employed at least twenty (20) hours per week in a participating early childhood facility; or

b.[~~Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or~~

~~c.~~] Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;

5.a. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;

b. An applicant who is enrolled in the final semester of study before earning an ECAC-approved early childhood credential, associate degree, or bachelor's degree may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;

6. Pursuing an ECAC-approved:

a. Early childhood credential;

b. Associate degree; or

c. Bachelor's degree.

7. Ineligible to receive professional development funds from another education program; and

8. Maintaining satisfactory academic progress as determined by the participating institution;

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and

(c) Not be:

1. In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;

2. Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

3. Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECAC-approved early childhood credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECAC.

(b) A student shall submit a written statement of appeal to the ECAC within fifteen (15) calendar days after the date of notification of denial.

(c) If a student appeals a scholarship denial, the ECAC shall ensure that:

1. A hearing officer or committee appointed by ECAC shall consider the student's appeal and make a decision on the issues involved; and

2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.

(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:

(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;

(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or

(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood credential of a baccalaureate degree, paid for in part by a scholarship.

Section 2. Application. (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application set forth in 11 KAR 4:080, Section 1(4)(b), from the KHEAA Web site, http//www.kheaa.com/prog_ecds.html. The applicant shall complete the online application.

(2) The applicant shall:

(a) Print the employer verification page from the completed application;

(b) Have this page certified by an authorized representative of the participating early childhood facility; and

(c) Submit the certified page to the professional development counselor on or before:

1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

2. November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:080, Section 1(4)(a). This application shall be completed either in paper format or electronically via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.

(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECAC the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECAC no later than:

(a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

(b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) The employer signature page shall be received by the ECAC no later than August 1, December 1, and May 1 of the appropriate semester.

(5) ECAC shall certify the eligibility determination of approved applicants.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed:

(a) The amount of tuition charged for enrollment in nine (9) credit hours; and

(b) The award maximum.

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be $1,800.

LISA PAYNE, Chair

APPROVED BY AGENCY: August 28, 2014

FILED WITH LRC: September 11, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2014. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship program as authorized by KRS 164.518(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the application selection process for the Early Childhood Development Scholarship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the applicant selection process for the Early Childhood Development Scholarship 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 will change the existing administrative regulation by removing individuals employed to provide training in early childhood development from eligibility for an initial award under the Early Childhood Development Scholarship program.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to more accurately proscribe the eligibility criteria for participation in the scholarship program.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing eligibility criteria pertaining to applicants for participating in the Early

Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by enhancing the eligibility criteria for participation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by enhancing the eligibility criteria for participation in the Early Childhood Development Scholarship program consistent with the policies and procedures of the Governor's Office of Early Childhood.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed change would impact only those individuals employed to provide training in early childhood development.

(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: Those individuals employed to provide training in early childhood development, as opposed to those who provide actual early child care services, would be ineligible for an award under this program. Based upon information provided by the Governor's Office of Early Childhood, the net impact would be negligible at best.

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

(a) Initially: There will be no cost associated with this amendment.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Funding for the Early Childhood Development Scholarship program is provided through money designated to the Commonwealth from the master settlement agreement signed November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 200 Ky. Acts ch. 549, Part XI.

(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 does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all 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? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET
Office of the Secretary
(Amendment)

101 KAR 2:210. 2015[~~2014~~] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2015[~~2014~~] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2015[~~2014~~] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2015[~~2014~~] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2015[~~2014~~] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2014 at 10:00 a.m. at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 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 October 31, 2014. 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: Sharron Burton, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2015 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2015.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2015 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute authorizing the self-insured health plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2015 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2014 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2014. This administrative regulation replaces the 2014 plan year handbook with the 2015 plan year handbook. The 2015 plan year handbook contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan for plan year 2015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees under the Public Employee health Insurance Program for plan year 2015. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2015 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2015 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 182,813 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 287,585 members in the self-insured plan including employees, retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by affected entities to comply with the incorporation of the 2015 plan year handbook in the administrative regulation. The 2015 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health plans offered for the 2015 plan year. Specifically, the 2015 plan year handbook will provide information about the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2015 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will give notice to participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program regarding employer and employee premium contributions for health insurance coverage in 2015. There is no direct cost impact resulting from incorporating the 2015 plan year handbook into the administrative regulation.

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2015, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. The Public Employee Health Insurance Program will have minor employer and employee contribution adjustments for plan year 2015. Plan year 2015 will have a two percent budgeted employer contribution.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees participating in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21,105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(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 not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2015 and each subsequent plan year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS, AND HERITAGE
Kentucky Heritage Council
(Amendment)

300 KAR 6:010. Historic rehabilitation tax credit certifications.

RELATES TO: KRS 171.396, 171.3961, 171.397, 16 U.S.C. 470a(a)(1), 36 C.F.R. Parts 60, 67

STATUTORY AUTHORITY: KRS 171.397(14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions. (1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 to 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation[~~already taken~~].

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Completed rehabilitation project" means any certified historic structure which has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(7)[~~(6)~~] "Completion date" means:

(a) For owner-occupied residential property, the month, date, and year in which the last eligible rehabilitation expense is incurred; or

(b)[~~for owner-occupied residential property.~~] For all other property,[~~it means~~] the month, date, and year when the rehabilitation project is completed to allow[~~such that it allows~~] occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(8)[~~(7)~~] "Department" means the Kentucky Department of Revenue.

(9)[~~(8)~~] "Director" means the executive director of the Kentucky Heritage Council.

(10)[~~(9)~~] "Disqualifying work" is defined by KRS 171.396(5).

(11)[~~(10)~~] "Exempt entity" is defined by KRS 171.396(6).

(12)[~~(11)~~] "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review[~~filing~~] fee.

(13) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397 or KRS 171.3961, whichever is applicable, when the Certificate of Rehabilitation-Part 3 is filed and approved by the council.

(14)[~~(12)~~] "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(15)[~~(13)~~] "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C.[~~Section~~] 470a(a)(1), and implemented through 36 C.F.R. Part 60.

(16)[~~(14)~~] "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee[~~. For purpose of the Act, a lessee shall be~~

~~considered the owner of the property~~] if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or[~~and~~] thirty-nine (39) years for all other property.

(17)[~~(15)~~] "Owner-occupied residential property" is defined by KRS 171.396(8).

(18) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397, on June 30 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(19)[~~(16)~~] "Property" means a building and its site and landscape features.

(20)[~~(17)~~] "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(21)[~~(18)~~] "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the director.

(22)[~~(19)~~] "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(23)[~~(20)~~] "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(24)[~~(21)~~] "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(25)[~~(22)~~] "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(26)[~~(23)~~] "Substantial rehabilitation" is defined by KRS 171.396(10).

(27)[~~(24)~~] "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation. (1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the following forms:

(a) Certification Application-Intent to Apply for Expanded Credit;

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) Certification Application-Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification[~~certifications~~] of historic significance and of rehabilitation under the Act shall be[~~is~~] a four (4)[~~three (3)~~] stage process that requires the filing of the following forms:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;[~~and~~]

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4)[~~(2)~~] Part 1 shall be[~~is~~] a request for certification of historic significance.

(5) Part 2 shall be[~~is~~] a request for certification of a proposed rehabilitation project.

(6)[~~(3)~~] Part 3 shall be[~~is~~] a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as follows:

(a)1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961[~~of the year in which the rehabilitation commences~~].

(b) Part 1 and[~~2 shall be filed with the council on or before April 29 of the year in which the rehabilitation commences.~~] Part 2 may be filed after rehabilitation has commenced, but an applicant who begins[~~applicants who begin~~] rehabilitation prior to receiving Part 2 certification assumes[~~assume~~] the risk that certification may be denied.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit[~~upon completion of the rehabilitation but no later than thirty (30) days following the close of the calendar year in which the completion of the rehabilitation occurred as defined in, Section 1(6) of this administrative regulation~~].

(9)[~~(4)~~] If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1. (1) Application. The Certification Application Part 1-Evaluation of National Register Status form[~~forms~~] shall be timely filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be[~~is~~] considered certified a historic structure for purposes of the Act subject to confirmation by the council. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to insure that the listed property has not lost the characteristics which caused it to be listed on the National Register of Historic Places;

4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and

8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. An applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district. The following information shall be provided:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Name of historic district;

4. Photographic documentation of the building and property

prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and

8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property[~~Properties~~] containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally-related historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be[~~are~~] those which have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a)[~~Some properties listed in the National Register of Historic Places are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually.~~] In addition to the existing National Register documentation, an application for certification[~~applications for certifications~~] of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property[~~Properties~~] located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district shall be a property[~~is one~~] which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development;

2. A property not contributing to the historic significance of a district shall be a property[~~is one~~] which does not add to the district's sense of time and place and historical development; or[~~one~~] where the location design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost; and

3. If the building was[~~Ordinarily buildings that have been~~] built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its[~~their~~] historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation[~~Evaluations~~] of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment which qualify it as a certified historic structure shall be[~~are~~] determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall[~~are~~] not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established[~~set forth~~] in subsection (3) of this section[~~3(3) of this administrative regulation~~].

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established[~~set forth~~] in subsection (3) of this section;[~~3(3) of this administrative regulation,~~] or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail[~~email~~] using the contact information provided on the application. The applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver of a deficiency[~~deficiencies~~] or an alteration of a time limitation established[~~limitations set forth~~] under the Act.

(6) An applicant[~~Applicants~~] shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 60.15.

Section 4. Certifications of Rehabilitation-Part 2. (1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form[~~forms~~] shall be timely filed with the council for certification that a rehabilitation plan is a substantial rehabilitation[~~as defined by KRS 171.396(10),~~] and meets the standards for rehabilitation established in subsection (2) of this section[~~in Section 4(2) of this administrative regulation~~].

(b) A rehabilitation project[~~projects~~] shall be done according to a rehabilitation plan.

(c) The burden shall be[~~is~~] upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation.

(d) An application shall include the following information:

1.[~~(a)~~] Names and mailing addresses of owners;

2.[~~(b)~~] Name and address of property;

3.[~~(c)~~] Designation of whether the application is for owner-occupied residential property or other property;

4.[~~(d)~~] Information sufficient to establish the proposed use of the structure;

5.[~~(e)~~] The adjusted basis for the property if other than owner-occupied residential or owned by an exempt entity[~~as defined by KRS 171.396(6)~~];

6.[~~(f)~~] Proposed starting date and completion date;

7.[~~(g)~~] Projected qualified rehabilitation expenses;

8.[~~(h)~~] Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;

9.[~~(i)~~] The taxpayer identification number or Social Security number;

10.[~~(j)~~] Written detailed description of existing features and their conditions,[~~;~~] and a written description of proposed rehabilitation work and the impact on existing features;

11.[~~(k)~~] Plans for any attached, adjacent, or related new construction, if applicable; and

12.[~~(l)~~] Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be[~~are~~] the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation.[~~The intent of the standards is to promote the long-term preservation of a property's significance through the preservation of historic materials and features. The standards~~

~~pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction.~~] Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the[~~following~~] standards for rehabilitation established in this paragraph.[~~:~~]

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.[~~;~~]

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.[~~;~~]

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates[~~Changes that create~~] a false sense of historical development, such as adding a conjectural feature[~~features~~] or architectural element[~~elements~~] from another building[~~other buildings~~], shall not be undertaken.[~~;~~]

4. Changes to the property[~~Most properties change over time; those changes~~] that have acquired historic significance in their own right shall be retained and preserved.[~~;~~]

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.[~~;~~]

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.[~~;~~]

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.[~~;~~]

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.[~~;~~]

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.[~~; and~~]

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification. The burden shall be[~~is~~] upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure. Inappropriate rehabilitation measures on historic properties shall include:

1. Improper masonry repointing materials and techniques;

2. Improper exterior masonry cleaning methods;

3. Improper introduction of insulation if damage to historic fabric would result; and

4. Incompatible additions and new construction.

(d)[~~In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In these cases,~~] The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems[~~this extreme intervention~~] as[~~part of~~] a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine whether a rehabilitation project is a substantial rehabilitation, the[~~following~~] conditions established in this subsection shall apply.[~~:~~]

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if they are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990 (42 U.S.C.[~~Section~~] 12101), and fire suppression systems and fire escapes; and

3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those[~~such~~] costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall[~~do~~] not include the construction costs for a new building, parking lot, or sidewalk[~~buildings, parking lots, or sidewalks~~].

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation[~~as defined by KRS 171.396(10),~~] and meets the standards for rehabilitation established[~~set forth~~] in subsection (2) of this section[~~4(2) of this administrative regulation~~].

(5)(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established[~~set forth~~] in subsection (2) of this section[~~4(2) of this administrative regulation~~], the council shall attempt to notify the applicant by mail, telephone, or e-mail[~~email~~] using the contact information provided on the application.

(b) An applicant's failure to respond may result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency[~~deficiencies~~] or an alteration of a time limitation established[~~limitations set forth~~] under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may[~~can~~] only make substantive changes in the work described in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established[~~set forth~~] in subsection (2) of this section[~~4(2) of this administrative regulation~~] and is a substantial rehabilitation[~~as defined by KRS 171.396(10) set forth in 300 KAR 6.010, Section 4(3)~~].

Section 5. Certifications of Rehabilitation-Part 3 Completed

Work. (1) Application. Upon completion of a rehabilitation project, an applicant shall[~~timely~~] file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the following information:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) The taxpayer identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the following:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;[~~and~~]

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation[~~certification~~] by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable; or

2. Transfer the credit as established in KRS 171.397(8).

(3) Scope of review.

(a)1. Rehabilitation shall encompass[~~encompasses~~] all work on the interior and exterior of the certified historic structure or structures and the site and environment, as determined by the council, as well as related demolition, new construction, or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established[~~set forth~~] in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be[~~rehabilitations projects are not~~] permitted. Each rehabilitation project shall be self-contained[~~selfcontained~~], and completion of the rehabilitation project shall not be contingent upon a phased rehabilitation to commence after receiving final certification of rehabilitation.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted, and may result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately-documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if all the following requirements have been met:

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established[~~defined~~] in Section 4(2) of this administrative regulation;[~~and~~]

(b) The completed rehabilitation project was a substantial rehabilitation[~~as defined by KRS 171.396(10)~~]; and

(c) Part 3 was filed with the council after the completion date[~~as defined in, Section 1(5) of this administrative regulation, and within thirty (30) days following the close of the calendar year in which the completion of the rehabilitation occurred~~].

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established[~~set forth~~] in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail[~~email~~] using the contact information provided on the application. Applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established[~~set forth~~] under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397. (1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement setting forth grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year as established in KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(1) or (2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a Certification of Completed Work on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this administrative regulation, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in Section 6 of this administrative regulation.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been reinstated to file an appeal as established in Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal as established in Section 8 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year as established in KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation. (a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the:

1. Owner provides written documentation of reasonable grounds established in subsection (5) of this section for an

extension; and

2. Owner pays a review fee for a Part 2 application in the amount established in Section 10(1) or (2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be permitted to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established[~~set forth~~] in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act by filing an appeal in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal. (1) An appeal shall be made within five (5) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

(a) Reached incorrect conclusions of law;

(b) Made clearly erroneous factual findings;

(c) Did not consider relevant facts; or

(d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

(a) Confirm the determination;

(b) Reverse the determination on account of incorrect conclusions of law; or

(c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal was decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director as established in this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;

2. Reverse the determination on account of incorrect conclusions of law; or

3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9.[~~7.~~] Revocation of Owners' Certifications. (1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal as established in Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked[~~has thirty (30) days to comment on the matter by filing written objections with the director. The council shall notify the department of its final determination, and any tax consequences of a revocation of certification shall be determined by the department~~].

Section 10.[~~8.~~] Fees for Processing Rehabilitation Certification Requests. (1) Payment of fees for review of Parts 2 and 3 shall be filed with the council when applications are filed and are nonrefundable. Certification shall not be issued until the appropriate remittance is received. Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property shall be[~~are~~] charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a[~~will be no~~] charge for a Part 3 review[~~fee~~].

Rehabilitation Costs for Owner-Occupied Residences	Part 2 Review Fee	Part 3 Review Fee
Less than $100,000	$60	$40
$100,000 or greater	$150	$100

(3) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests for all property other than owner-occupied residential property shall be[~~are~~] charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a[~~will be no~~] charge for a Part 3 review[~~fee~~].

Rehabilitation Costs for Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee
Less than $50,000	$60	$40
$50,000- $99,999[~~$100,000~~]	$150	$100
$100,000-$499,999	$300	$200
$500,000-$999,999	$450	$300
$1 million or greater	$900	$600

(4) For tax credits under KRS 171.3961, fees for reviewing rehabilitation certification requests shall be charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs	Part 2 Review Fee	Part 3 Review Fee
Greater than $15 million	$3,000	$2,500

Section 11.[~~9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification Application Part 1-Evaluation of National Register Status", [~~(~~]KHC Form TC-1, Rev. 2014[~~2007)~~];

(b) "Certification Application Part 2-Description of Rehabilitation", [~~(~~]KHC Form TC-2, Rev. 2014[~~2007)~~];

(c) "Certification Application Part 3-Request for Certification of Completed Work", [~~(~~]KHC Form TC-3, Rev. 2014[~~2007)~~];

(d) "Certification Application-Continuation/Amendment", [~~(~~]KHC Form TC-2a, Rev. 2014[~~2007)~~];[~~and~~]

(e) "Summary of Investment and Election of Credit", [~~(~~]KHC Form TC-4, Rev. 2014; and

(f) "Certification Application-Intent to Apply for Expanded Credit", KHC Form TC-0, Rev. 2014[~~2007)~~].

(2) This[~~The~~] material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

CRAIG A. POTTS, Executive Director

APPROVED BY AGENCY: September 15, 2014

FILED WITH LRC: September 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2014, at 10:00 a.m. (EST), at the offices of the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, October 31, 2014. 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: Peggy D. Guier, Staff Attorney, Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, phone (502) 564-7005, ext. 129, fax (502) 564-5280.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peggy D. Guier

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth a uniform certification process to be applied by the Kentucky Heritage Council in determining whether a taxpayer's rehabilitation project under KRS 171.397 is eligible for a certified historic structure rehabilitation tax credit against taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505.

(b) The necessity of this administrative regulation: The regulation standardizes the certification process under KRS 171.396 and KRS 171.397, and assists in achieving greater taxpayer compliance with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.397(14) permits the Kentucky Heritage Council to promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of KRS 171.397.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation adopts a uniform process for certifications of rehabilitation of certified historic structures that meets the United States Secretary of the Interior's Standards for Rehabilitation and expedites the certification 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 sets forth a uniform certification process to be applied by the Kentucky Heritage Council in determining whether a taxpayer's rehabilitation project under KRS 171.3961 is eligible for a certified historic structure rehabilitation tax credit against taxes imposed by KRS 141.020, 141.040, or 141.0401. The amendment sets a fee for reviewing applications filed under KRS 171.3961. The amendment sets forth a procedure for recapture of preliminary tax credit allocations under KRS 171.397. The amendment provides for a procedure for an appeal of a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act. Finally, as a housekeeping measure, it corrects formatting and drafting issues from the previously filed regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment standardizes the certification process under KRS 171.3961, and assists in achieving greater taxpayer compliance with the statute. It allows a process for recapture of preliminary tax credit allocations under KRS 171.397 if the structure has been demolished, has failed to qualify as a substantial rehabilitation, or has failed to meet the United States Secretary of the Interior's Standards for Rehabilitation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.397(14) permits the Kentucky Heritage Council to promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of KRS 171.397. As provided under subsection (5) of KRS 171.3961, KRS 171.397(14) also applies to KRS 171.3961.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will adopt a uniform process under KRS 171.3961 for certifications of rehabilitation of certified historic structures that meets the United States Secretary of the Interior's Standards for Rehabilitation and will expedite the certification process. A procedure for recapture of preliminary tax credit allocations under KRS 171.397 will allow tax credit files to be closed in a more timely and efficient manner and allow unused preliminary tax credit allocation to be added to the certification rehabilitation credit cap for the next calendar year as established in KRS 171.397(2)(c).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer, individual, corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted, recognized by the Department of Revenue for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, and seeking a credit against taxes imposed by KRS 141.020 (Kentucky individual income taxes), KRS 141.040 (Kentucky corporation income taxes), KRS 141.0401 (Kentucky limited liability entity taxes), or KRS 136.505 (Kentucky franchise tax for financial institutions); the Department of Revenue; the Kentucky Heritage Council reviewing certifications of rehabilitation; and local governments authorized by the Kentucky Heritage Council pursuant to KRS 171.397 (13) to perform reviews of Certifications of Application Part 1 and Part 2 of the certification process and submit recommendations to the Council.

(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 regulation will impact the taxpayers listed above, because it provides a uniform process under KRS 171.3961 for certifications of rehabilitation of certified historic structures that meets the United States Secretary of the Interior's Standards for Rehabilitation.

(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: Taxpayers requesting certifications of historic significance and of rehabilitation under KRS 171.3961 will undergo a five-stage process that will require the filing of Certification of Application-Intent to Apply For Extended Credit, Certification of Application Part 1-Evaluation of National Register Status, Certificate of Application Part 2-Description of Rehabilitation, Certificate of Application Part 3-Request for Certification of Completed Work, and Certificate of Application-Investment Summary and Election of Credit forms along with all required supporting documentation. If taxpayer has failed to obtain a Certification of Application Part 3-Certification of Completed Work within thirty-six (36) months from the date or receiving a preliminary tax credit allocations under KRS 171.397, the amended regulation sets forth a process for recapture of the preliminary allocation and allows unused preliminary tax credit allocation to be added to the certification rehabilitation credit cap for the next calendar year. The amendment permits taxpayers to make an unlimited number of requests for extension for good cause for additional twenty-four (24) month periods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Processing fees shall accompany the filing of Certificate of Application Part 2-Description of Rehabilitation, and Certificate of Application Part 3-Request for Certification of Completed Work forms. Processing fees are based upon the total rehabilitation cost of the project and are $3,000 for filing Part 2 and $2,500 for filing Part 3. Taxpayers receiving a preliminary allocation and desiring a twenty-four (24) month extension or

successfully objecting to a notice to recapture shall be required to file an additional fee for a Part 2 review.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Standards for certification of historic significance are clearly established; the Council's Certifications of Part 1 and Part 2 will determine credit eligibility against taxes imposed by KRS 141.020, 141.040, and 141.0401 upon completion of the rehabilitation; and the Council's certification process for rehabilitation will better insure that rehabilitation plans comply with uniform standards and protect the historic integrity of the structures. Recaptured preliminary tax credit allocations under KRS 171.397 will be added to the certified rehabilitation credit cap for the next calendar year and be made available for preliminary allocation to future qualified rehabilitation projects. Taxpayers are provided a standard and uniform process for an appeal of a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act.

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

(a) Initially: Most certification reviews will take place at the office of the Kentucky Heritage Council. Most of the agency's work to implement this regulation would be included in our normal budgetary costs.

(b) On a continuing basis: Same as initial cost. There may be additional travel costs if it becomes necessary to review projects at the sites. Currently two (2) staff member review the Part 1 and Part 2 Certifications. Additional staff help may be necessary if the number of applications increase in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will come from the normal budget for the Kentucky Heritage Council.

(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 funding will be necessary. The fees established in the original regulation have not been increased. It is projected that the additional fees will be sufficient to cover reasonable costs associated with review of the certification applications for tax credits under KRS 171.3961.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A processing fee is associated with this regulation for tax credit applications under KRS 171.3961, and is tiered based upon projected rehabilitation costs for Part 2 and actual rehabilitation costs for Part 3. Taxpayers receiving a preliminary allocation and desiring a twenty-four (24) month extension or successfully objecting to a notice to recapture shall be required to file an additional fee for a Part 2 review.

(9) TIERING: Is tiering applied? Processing fees were tiered based upon projected and actual rehabilitation costs. The lowest tier of expenses up to $60,000 cover the maximum available credit for owner-occupied residential property, so all residential property owners are treated equally. The remaining tiers of expenses represent increases commensurate with the cost of all other projects, mainly commercial, as increasing costs are indicative of increasing levels of complexity, higher intensity of inspection and review, and increased likelihood of changes. The additional tier for tax credits under KRS 171.3961 represents the increased expenses due to the massive scale of the projects with over $15,000,000 in qualified rehabilitation expenditures and the degree of inspection and specialized review required.

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 Heritage Council, an agency of the Tourism, Art, and Heritage Cabinet, is required to certify to the Department of Revenue the maximum historic preservation tax credit available under KRS 171.397 for taxpayers seeking a tax credit against taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505. For tax credits available under KRS 171.3961, the Council's Certifications of Part 1 and Part 2 will determine credit eligibility against taxes imposed by KRS 141.020, 141.040, and 141.0401 upon completion of the rehabilitation. It is noted that KRS 171.397(13) provides that the Council may authorize a local government to perform initial review of applications for the credit allowed under the statute and forward the applications to the Council with recommendations. The Council has not, nor does it anticipate, the authorization of any local government to perform this function and no part of this regulation relates to any current program, service, or requirement of a state or local government entity.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.396, 171.3961, and 171.397.

(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? Based upon the number and amount of tax credits claimed last fiscal year and the number of credit application estimated to be filed under KRS 171.3961, the estimated revenue generated to state government will be approximately $68,000.

(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 estimated revenue generated for state government for subsequent years will be approximately the same as for the first four years and as long as the statutory cap on the total credit claimed by all taxpayers in each fiscal year remains $5,000,000. The estimated revenue generated for 2018 and beyond shall revert back to pre-2014 levels as the credit under KRS 171.3961 will no longer be applicable.

(c) How much will it cost to administer this program for the first year? Specific dollar estimates cannot be given. Currently the programs costs are being met through the normal agency budget. Expenditures include the following: (i) a percentage of four (4) staff salaries; two-thirds of two (2) salaried position of $46,000 plus benefits and one-quarter of two (2) staff positions of $30,000 plus benefits; and (ii) miscellaneous expenses for mailing, phone, and travel for inspections where necessary. Total expenses are estimated to be somewhere between $100,000 and $120,000.

(d) How much will it cost to administer this program for subsequent years? Costs shall remain roughly the same as the previous year for the first four years and as long as the statutory cap on the total credit claimed by all taxpayers in each fiscal year remains $5,000,000. The estimated revenue generated for 2018 and beyond shall revert back to pre-2014 levels as the credit under KRS 171.3961 shall no longer be applicable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

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 creel limits and methods of take, to regulate the buying,

selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian carp and scaled rough fish harvest program.

Section 1. Definitions. (1) "Asian carp" means:
(a) Bighead carp;
(b) Black carp;
(c) Grass carp; or
(d) Silver carp.
(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.
(3) "Program participant" means a commercial fisherman who is:
(a) Enrolled in the Asian carp and scaled rough fish harvest program; and
(b) Fishing in restricted water.
(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:
(a) Commercial fishing is prohibited; or
(b) Commercial fishing with gill or trammel nets is prohibited.
(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:060.
(6) "Whip net set" means a gill or trammel net that is:
(a) Set to encircle and harvest Asian carp and scaled rough fish; and
(b) Always tended by a program participant while in the water.

Section 2. Qualifications. A commercial fisherman shall:
(1) Contact the department and request to be included in the program; and
(2) Possess a valid Kentucky commercial fishing license[~~;~~
~~(3) Have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years; and~~
~~(4) Have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period~~].

Section 3. Program Participant Requirements. A program participant shall:
(1) Call the department at 800-858-1549 prior to[~~at least forty-eight (48) hours in advance of~~] the requested fishing date and provide the[~~following~~] information established in paragraphs (a) through (e) of this subsection:
(a) The participant's name;
(b) The fish buyer's name and phone number;
(c) Date requested;
(d) The location in the restricted water to be fished; and
(e) The name or location of the boat ramp that will be used;
(2) Harvest a weight ratio of at least seventy-five (75) percent Asian carp to twenty-five (25) percent scaled rough fish over a one (1) month period;
(3) Only fish:
(a) On dates approved by the department; and
(b) At a location approved by the department;
(4) Immediately notify the department if the participant changes the:
(a) Fishing location in the restricted water body; or
(b) Boat ramp being used;
(5) Only use a whip net set with a minimum bar mesh size of three and one-quarter (3.25) inches;
(6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;
(7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in[~~pursuant to~~] Section 2 of this administrative regulation;
(8) Immediately release all by-catch;
(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155; and
(10) Be suspended from the program:
(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and
(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Department Requirements. (1) The department shall:
(a) Maintain a list of program participants and their contact information, which shall be:
1. Provided to known fish buyers; and
2. Updated at least weekly; and
(b) Review all restricted water fishing requests as established in[~~pursuant to the requirements of~~] Section 3 of this administrative regulation.
(2) The department shall approve a qualified fishing request by assigning:
(a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and
(b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.
(3) The department shall not approve a fishing request for[~~the following~~] reasons established in paragraphs (a) through (c) of this subsection:
(a) Higher than normal by-catch is likely to occur at that location and time;
(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time; or
(c) A requested date falls on:
1. Memorial Day;
2. Labor Day;
3. July 4; or
4. A Saturday or Sunday from April 1 through September 30.

Section 5. Program disqualification. A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian carp and scaled rough fish harvest program while that license is revoked or suspended.

Section 6. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: September 7, 2014
FILED WITH LRC: September 11, 2014 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2014, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 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 by October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian carp and scaled rough fish harvest program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the qualification requirements that a commercial fisherman must have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years and have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period. In addition, commercial anglers will not be required to notify the department at least 48 hours prior to requesting a fishing date, but still must obtain approval prior to fishing restricted waters.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make it easier for commercial fishermen to harvest Asian carp from restricted waters.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all commercial fishermen who had previously not qualified to participate in the program. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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: Commercial fishermen will no longer be required to have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years and have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period to participate in the program. In addition, commercial anglers will not be required to notify the department at least forty-eight (48) hours prior to requesting a fishing date, but still must obtain approval prior to fishing restricted waters.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will benefit from this amendment because they will now only be required to possess a valid commercial fishing license to participate in the program. In addition, commercial fishermen will be allowed more time to request a fishing date from the department.

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

(a) Initially: There will be no cost to the department to implement this administrative regulation.

(b) On a continuing basis: There now will be no continual cost to the Department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation because all commercial fishermen who fish for Asian carp will be regulated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Division will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:220. Reciprocal agreements regarding fishing.

RELATES TO: KRS[~~150.170,~~] 150.340, 150.440, 150.445, 150.450, 150.470[~~, 150.525~~]

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.170(8)[~~(7)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS

150.025(1)(h) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of the chapter. KRS 150.170(8)[(7)] authorizes the department to enter into reciprocal agreements with other states so that a person[where persons] holding a resident or nonresident fishing license issued by the state shall be permitted to perform the acts authorized by the license upon waters adjacent to the common boundaries. This administrative regulation establishes reciprocal agreement requirements between[procedures for applying the administrative regulations of] Kentucky and[the states] bordering states[Kentucky who share common waters].

Section 1. Reciprocal Agreements. (1) Pursuant to KRS 150.170(8)[(7)], Kentucky has entered into reciprocal agreements with[its] neighboring states regarding fishing requirements[guidelines] on common bodies of water.

(2) Persons fishing in[the] Dale Hollow Lake, the Big South Fork portion of the Cumberland River, a portion of the Kentucky Lake, the Mississippi River,[and] the Ohio River, and the Big Sandy and Tug Fork rivers shall comply with[follow] the fishing requirements[guidelines established] in the reciprocal agreements established in Section 10 of this administrative regulation.

Section 2. Dale Hollow Lake. (1) Pursuant to the[a] reciprocal agreement established in Section 10(1)(a) of this administrative regulation[between the department and the Tennessee Wildlife Resources Agency], a valid sport fishing license issued by the State of Tennessee shall be valid in the Kentucky portions of the Wolf River embayment of Dale Hollow Lake:

(a) Beginning where Wolf River joins the main part of the lake at the Obey River; and

(b) Including the Illwill Creek Embayment.

(2) A person fishing within the boundaries established[in the waters delineated] in subsection (1) of this section shall observe the size and creel limits of the state in which the person[he or she] is licensed.

Section 3. Big South Fork of the Cumberland River. (1) Pursuant to the[a] reciprocal agreement established in Section 10(1)(b) of this administrative regulation[between the department and the Tennessee Wildlife Resources Agency], a valid sport fishing license issued by either Tennessee or Kentucky shall be valid in the portion of the Big South Fork of the Cumberland River beginning at the Leatherwood Ford bridge at Highway 297 in Tennessee and continuing to the Highway 92 Bridge at Yamacraw, Kentucky.

(2) A person fishing within the boundaries established[in the waters described] in subsection (1) of this section shall observe the size and creel limits of the state in which the person[he or she] is licensed.

Section 4.[The] Kentucky Lake. (1) Pursuant to a reciprocal agreement established in Section 10(1)(c) of this administrative regulation, Kentucky and Tennessee shall recognize the sport fishing licenses of the two (2) states on the portion of Kentucky Lake south of the Eggners Ferry Bridge (U.S. 68 and Hwy 80) in Kentucky and north of the Governor Ned McWhorter Bridge (U.S. 79 and Hwy 76) in Tennessee.

(2) Embayments and tributaries within this portion of Kentucky Lake, except Blood River embayment, shall be included[in the reciprocal agreement].

(3) The Blood River embayment boundary shall be delineated[defined] as a straight line between opposite points where the embayment connects to the main body of Kentucky Lake.

(4) A sport fishing license holder from either state may fish from the bank or attach legal sport fishing trot or limb lines in the reciprocal portion of Kentucky Lake.

(5) Sport fishing license holders shall abide by the administrative regulations of the state in whose waters they are fishing.

(6) Wildlife enforcement officials of either state shall have the right to inspect the licenses, permits, creel,[catches] and equipment of any person on the reciprocal portion of Kentucky Lake subject to the laws of either Kentucky or Tennessee.

Section 5. Mississippi River. (1) Pursuant to the[a] reciprocal agreement established in Section 10(1)(d) of this administrative regulation, Kentucky and Missouri shall recognize the sport fishing licenses and permits of Kentucky and Missouri.

(2) The main channel of the Mississippi River and the immediate side or secondary channels or chutes are included when referring to the Mississippi River.

(3) Sport fishing license or permit holders may:

(a) Fish from[or attach a device or equipment to] land along the river under the jurisdiction of the other state; or

(b) Attach a fishing device or equipment on land along the river under the jurisdiction of the other state.

(4) Landowner permission is required to fish from the banks of the Mississippi River.

(5) A person[(4) Sport fishing licensees and permittees] shall abide by the administrative regulations of the state in whose waters the person[he or she] is fishing, but should[. If] the two (2) states' administrative regulations conflict, a person[licensee and permittee] shall comply with the more[most] restrictive of the two (2) states' administrative regulations.

(6)[(5)] Wildlife enforcement officials of Kentucky and Missouri shall have the right to inspect the licenses, permits, creel,[catches] and equipment of any person on common portions of the Mississippi River subject to the laws of Kentucky and Missouri.

(7)[(6)] Exclusions to the agreement.

(a) Oxbow and floodplain lakes and tributary streams are not included in the agreement.

(b) A tributary is delineated by a straight line between opposite points where the stream or river connects with the main body of the Mississippi River.

(c)[(b)] The agreement does not include backwaters that extend onto the floodplain or tributaries when the river exceeds thirty-three (33) feet at the gauging station at Cairo, Illinois.

Section 6. Ohio River Agreement with the State of Ohio. (1) Pursuant to the[a] reciprocal agreement established in Section 10(1)(e) of this administrative regulation, Ohio and Kentucky shall recognize the sport fishing license and appropriate stamps of Ohio and Kentucky on the main stem and from the banks of the Ohio River where the Ohio River forms the state boundary, excluding embayments and tributaries[where the Ohio River forms the state boundary].

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued[licensee's and permittee's issuing state's administrative regulations shall apply to the licensee and permittee], except that a person who is[the administrative regulations of the state where sport] fishing[is occurring apply if the licensee is fishing] from a[the] bank shall comply with the administrative regulations of the state where the bank is located.

(3) Commercial fishing and musseling are prohibited[not permitted] on the Ohio side[Ohio's portion] of the river.

(4) Wildlife enforcement officials of either state shall have the right to inspect the license,[harvest limits,] creel,[limits] and equipment of a person on the Ohio River subject to the laws of either state.

(5) An embayment and a tributary are delineated by a straight line between opposite points where the embayment or tributary connects with the main body of the Ohio River.

Section 7. Ohio River Agreement with the State of Indiana. (1) Pursuant to the reciprocal agreement established in Section 10(1)(f) of this administrative regulation, Indiana and Kentucky shall recognize the sport fishing license and appropriate stamps or permits of Indiana and Kentucky on the main stem and from the banks of the Ohio River where the Ohio River forms the state boundary, excluding embayments and tributaries.

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued, except that a person who is fishing from a bank shall comply with the

administrative regulations of the state where the bank is located.

(3) Wildlife enforcement officials of either state shall have the right to inspect the license, creel, and equipment of a person on common portions of the Ohio River subject to the laws of either state.

Section 8. Ohio River Agreement with the State of Illinois. (1) Pursuant to the reciprocal agreement established in Section 10(1)(g) of this administrative regulation, Illinois and Kentucky shall recognize the sport fishing license and appropriate stamps or permits of Illinois and Kentucky on the main stem and from the banks of the Ohio River where the Ohio River forms the state boundary, excluding embayments and tributaries.

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued, except if the two (2) states' administrative regulations conflict, a person shall comply with the more restrictive of the two (2) states' administrative regulations.

(3) A person who is fishing from a bank shall comply with the administrative regulations of the state where the bank is located.

(4) Embayment and tributary boundaries are delineated by a straight line between opposite points where the tributary or embayment connects with the main body of the Ohio River.

(5) Wildlife enforcement officials of either state shall have the right to inspect the license, creel, and equipment of a person on common portions of the Ohio River subject to the laws of either state.

Section 9. Big Sandy and Tug Fork Rivers. (1) Pursuant to the reciprocal agreement established in Section 10(1)(h) of this administrative regulation, West Virginia and Kentucky shall recognize the sport fishing license and appropriate stamps or permits of West Virginia and Kentucky on the main stem and from the banks of the Big Sandy and Tug Fork rivers from the confluence of the Big Sandy River with the Ohio River to the Virginia state line, excluding tributaries, except that Kentucky residents shall hold any applicable Kentucky resident license.

(2) A person shall comply with the administrative regulations of the state in which the license or permit is issued, except that a person who is fishing from a bank shall comply with the administrative regulations of the state where the bank is located.

(3) A tributary boundary is delineated by a straight line between opposite points where the tributary connects with the main body of the Big Sandy or Tug Fork rivers.

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

(a) "Reciprocal Fishing Agreement Between the Department and the Tennessee Wildlife Resources Agency Regarding Dale Hollow Lake", November 1997 edition[";];

(b) "Reciprocal Fishing Agreement Between the Department and the Tennessee Wildlife Resources Agency Regarding the Big South Fork of the Cumberland River", November 1997 edition[";];

(c) "Reciprocal Agreement on Kentucky Lake between the Commonwealth of Kentucky and the State of Tennessee", August 2003 edition[";];

(d) "Reciprocal Fishing Agreement Between the Department and the State of Missouri Regarding the Mississippi River", February 2003 edition[";];[~~and~~]

(e) "Reciprocal Agreement Between the Department and the Ohio Department of Natural Resources", November 2002 edition;

(f) "Revision to Memorandum of Understanding between the Commonwealth of Kentucky, Department of Fish and Wildlife Resources and the State of Indiana Department of Natural Resources", October 2007 edition;

(g) "Amendment to the Memorandum of Understanding between the Commonwealth of Kentucky, Department of Fish and Wildlife Resources and the State of Illinois Department of Natural Resources", November 2007 edition; and

(h) "Reciprocal Agreement Between The State Of West Virginia And The Commonwealth Of Kentucky Regarding Reciprocal Hunting and Fishing Privileges", July 2014 edition[";].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: September 7, 2014
FILED WITH LRC: September 11, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2014, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 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 through October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mac, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reciprocal agreement requirements between Kentucky and bordering states that share common waters.

(b) The necessity of this administrative regulation: To allow for effective management and enforcement of common waters with bordering states.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of the chapter. KRS 150.170(8) authorizes the department to enter into reciprocal agreements with other states where persons holding a resident or nonresident fishing license issued by the state shall be permitted to perform the acts authorized by the license upon waters adjacent to the common boundaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by establishing the requirements of those reciprocal agreements between Kentucky and bordering states.

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

(a) How the amendment will change this existing administrative regulation: This amendment will add a reciprocal agreement between Kentucky and the State of West Virginia for the Big Sandy and Tug Fork rivers, and will incorporate by reference two other reciprocal agreements. The regulation has also been amended to better conform to Chapter 13A style requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the requirements provided in the reciprocal agreement referenced in (2)(a) above, and to incorporate by reference two other reciprocal agreements.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who fish on the main stem and from the banks of the Big Sandy and Tug Fork rivers from the confluence of the Big Sandy River with the Ohio River to the Virginia state line, excluding tributaries, will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals wishing to fish the waters described in (3) above will be required to obtain a valid sport fishing license. Kentucky residents must hold the applicable Kentucky resident license(s) and West Virginia residents must hold the applicable West Virginia resident license(s).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those individuals fishing the waters described in (3) above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals can now fish the waters described in (3) above with a single license and will not be required to buy an additional non-resident license to fish the bordering state's waters.

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

(a) Initially: This administrative regulation change will result in no initial change in cost.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals fishing the waters described in (3) above will be required to obtain the appropriate license.

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's Divisions of Fisheries and Law Enforcement 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 150.025(1)(h) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of the chapter. KRS 150.170(8) authorizes the department to enter into reciprocal agreements with other states where persons holding a resident or nonresident fishing license issued by the state shall be permitted to perform the acts authorized by the license upon waters adjacent to the common boundaries.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-six (56)[~~fifty-four (54)~~] consecutive days;

2. Thanksgiving Day for eleven (11)[~~nine (9)~~] consecutive days; and

3. The Saturday before[~~after~~] Christmas for twenty-three (23)[~~seven (7)~~] consecutive days;

(b) Woodcock, beginning on November 1 for forty-five (45) consecutive days;

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck[~~and teal~~], beginning on the third Wednesday in September for five (5) consecutive days;

(e) Teal, beginning on the third Wednesday in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common moorhen, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g)[~~(f)~~] Canada goose, beginning September 1 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Public land in the Ballard Zone;
2. Public land in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:
1. Daily limit of fifteen (15); and
2. Possession limit of forty-five (45).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:
1. The head; or
2. A fully-feathered wing.

(c) Woodcock:
1. Daily limit of three (3); and
2. Possession limit of nine (9).

(d) Common snipe:
1. Daily limit of eight (8); and
2. Possession limit of twenty-four (24).

(e) Virginia and sora rail, singly or in aggregate:
1. Daily limit of twenty-five (25); and
2. Possession limit of seventy-five (75).

(f) Common moorhen and purple gallinule, singly or in aggregate:
1. Daily limit of fifteen (15); and
2. Possession limit of forty-five (45).

(g) Wood duck and teal:
1. Daily limit of six (6)[~~four (4)~~], which shall not include more than two (2) wood ducks; and
2. Possession limit of eighteen (18)[~~twelve (12)~~], which shall not include more than six (6) wood ducks.

(h) Canada goose:
1. Daily limit of five (5)[~~three (3)~~]; and
2. Possession limit of fifteen (15)[~~nine (9)~~].

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:
(a) The head; or
(b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:

(a) Ballard WMA;
(b) Boatwright WMA;
(c) Doug Travis WMA;
(d) Duck Island WMA;
(e) Kaler Bottoms WMA;
(f) Kentucky River WMA;
(g) Ohio River Islands WMA;
(h) Sloughs WMA;
(i) South Shore WMA;
(j) Yatesville Lake WMA; and
(k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

(a) Dove or snipe after October 13; or

(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On Camp Webb property or the state park, except for youths drawn for any department quota dove hunt on Camp Webb property in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 22, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2014, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals

interested in attending this hearing shall notify this agency in writing by five business 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 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 through October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2014–2015 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

(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 twenty (20) additional days to the mourning dove season, provide four (4) additional "teal only" hunting days at the end of the current wood duck/teal season, increase the teal daily bag limit from four to six, and the wood duck/teal possession limit from twelve (12) to eighteen (18). It will also increase the Canada goose daily bag limit from three (3) to five (5) and the possession limit from twelve (12) to fifteen (15) during the September Canada goose season. All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and within the USFWS required frameworks.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase migratory bird hunting opportunity for early migratory bird hunting seasons, as defined by the dates in which the hunting season may open as early as September 1.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters will have additional hunting opportunity for mourning dove, teal, and Canada geese. Mourning dove hunters will have twenty (20) additional days added to the current hunting season, waterfowl hunters will have four (4) more days of "teal only" hunting beyond the traditional five (5)-day wood duck/teal season, and will be allowed to add two (2) more teal and two (2) more Canada Geese to their daily bag limit during the respective seasons for these two (2) species.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all waterfowl bird hunters.

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 Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. The amended regulation is not more restrictive than the federal frameworks.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), 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 Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or 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 Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures", September 15, 2014[~~July 26, 2013~~], are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12)
LLCC 02-05-05 Inmate Canteen (Amended 5/15/12)
LLCC 02-06-01 Inmate Control of Personal Funds (Amended 5/15/12)
LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 5/15/12)
LLCC 05-02-02 Outside Consultation and Research (Amended 5/15/12)
LLCC 06-01-01 Offender Information (Amended 9/15/14[~~Added 7/26/13~~])
LLCC 06-02-01 Open Records (Amended 5/15/12)
LLCC 08-04-01 Fire Safety (Amended 7/10/12)
LLCC 09-14-02 Guidelines for Contractors (Amended 7/10/12)
LLCC 09-18-01 Search Plan (Amended 5/15/12)
LLCC 09-18-03 Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 5/15/12)
LLCC 09-25-01 Procedure for Maintaining Current Inmate Photographs (Amended 9/15/14[~~5/15/12~~])
LLCC 09-29-01 Inmate Death (Amended 7/10/12)
LLCC 10-01-01 Special Management Inmates (Amended 9/15/14 [~~7/10/12~~])
LLCC 11-01-01 Dining Room Guidelines (Amended 7/26/13)
LLCC 11-02-01 Food Services: Security (Amended 5/15/12)
LLCC 11-03-01 Food Services: General Guidelines (Amended 5/15/12)
LLCC 11-04-01 Food Service Meals (Amended 5/15/12)
LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 5/15/12)
LLCC 11-05-02 Health Requirements of Food Handlers (Amended 5/15/12)
LLCC 11-06-01 Food Services: Inspections and Sanitation (Amended 7/10/12)
LLCC 11-07-01 Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12)
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 9/15/14[~~5/15/12~~])
LLCC 12-02-01 Laundry Services (Amended 7/10/12)
LLCC 12-03-01 Vermin and Insect Control (Amended 5/15/12)
LLCC 12-04-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 5/15/12)
LLCC 13-02-01 Access to Healthcare (Amended 5/15/12)
LLCC 13-02-02 Specialized Health Services (Amended 5/15/12)
LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 7/10/12)
LLCC 13-02-05 Medical Services Co-pay (Amended 11/12/13)
LLCC 13-03-01 Mental Health Services (Amended 5/15/12)
LLCC 13-03-02 Use of Psychotropic Medications (Amended 5/15/12)
LLCC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 7/26/13)
LLCC 13-04-02 Health Education and Special Health Programs (Added 7/26/13)
LLCC 13-04-06 Psychological and Psychiatric Records (Added 5/15/12)
LLCC 13-05-02 Self-Administration of Medication (Inmate) (Amended 7/26/13)
LLCC 13-06-01 Health Records (Amended 7/26/13)
LLCC 13-06-03 Notification of Inmate Family of Serious Illness, Surgery or Inmate Death (Amended 7/26/13)
LLCC 13-07-01 Serious and Infectious Diseases (Amended 7/26/13)
LLCC 13-07-02 Medical Waste Management (Amended 5/15/12)
LLCC 13-08-01 Restraint Approval (Amended 5/15/12)
LLCC 13-09-01 Substance Abuse and Chemical Dependency Program (Amended 5/15/12)
[~~LLCC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/12)~~]
LLCC 14-03-01 Inmate Legal Services (Amended 9/15/14[~~5/15/12~~])
LLCC 15-01-02 Inmate Housing Assignment (Amended 5/15/12)
LLCC 15-01-03 Operational Procedures of the Units (Amended 5/15/12)
LLCC 15-01-04 Rules of the Unit (Amended 9/15/14[~~7/26/13~~])
LLCC 15-01-08 Searches and Control of Excess Property (Amended 7/26/13)

LLCC 15-01-09 Laundry Unit Services (Amended 9/15/14[~~5/15/12~~])
LLCC 16-01-01 Inmate Correspondence (Amended 5/15/12)
LLCC 16-01-02 Inmate Privileged or Legal Mail (Amended 5/15/12)
LLCC 16-01-03 Inmate Packages (Amended 5/15/12)
LLCC 16-02-01 Inmate Visiting (Amended 7/26/13)
LLCC 16-02-02 Extended and Special Visits (Amended 5/15/12)
LLCC 16-02-03 Restricted Visitation Privileges (Amended 5/15/12)
LLCC 16-03-04 Parole Hearings: Media and Visitors (Amended 5/15/12)
LLCC 17-01-01 Inmate Transportation, Reception and Discharge Process (Amended 5/15/12)
LLCC 17-03-01 Assessment and Orientation (Amended 9/15/14[~~7/26/13~~])
LLCC 17-04-01 Personal Property Control (Amended 5/15/12)
LLCC 17-04-02 Missing or Stolen Inmate Personal Property (Amended 5/15/12)
LLCC 17-05-01 Appliances to Outside Dealers for Repair (Amended 7/10/12)
LLCC 18-01-01 Meritorious Housing (Amended 7/26/13)
LLCC 18-02-01 Minimum Security Unit Operations (Amended 7/26/13)
LLCC 19-01-02 Job Assignments and Dismissals (Amended 9/15/14[~~7/26/13~~])
LLCC 20-01-01 Educational Programs (Amended 7/26/13)
LLCC 21-01-01 Library Services (Amended 5/15/12)
LLCC 22-01-01 Recreation and Inmate Activities (Amended 9/12/14[~~5/15/12~~])
LLCC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/12)
LLCC 22-02-02 Inmate Photographs Project (Amended 5/15/12)
LLCC 22-05-02 Arts and Crafts Program (Amended 5/15/12)
LLCC 23-01-01 Religious Program (Amended 9/15/14[~~7/26/13~~])
LLCC 23-01-03 Inmate Family Emergency Notification (Amended 9/15/14[~~5/15/12~~])
LLCC 24-01-01 Counseling and Social Services (Amended 7/26/13)
LLCC 25-01-01 Final Release (Amended 5/15/12)
LLCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 9/15/14[~~5/15/12~~])
LLCC 26-02-01 Use of Students (Amended 5/15/12)
LLCC 26-02-02 Student and Volunteer Identification Badges (Amended 5/15/12)
LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, and Volunteers (Amended 5/15/12)

(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: September 12, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on October 21, 2014 at 10:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON**:** Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

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 operation of Luther Luckett Correctional Complex regarding the rights and responsibilities of Luther Luckett Correctional Complex 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 accreditation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Luther Luckett Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Luther Luckett Correctional Complex employees and the inmate population as to employee duties, inmate responsibilities, and the procedures to govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the policies and procedures to reflect changes in operations at the institution, clarify language, make changes to conform to KRS Chapter 13A, and update ACA standards.

(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: The statutes permit the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Luther Luckett Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: It makes changes to conform to Chapter 13A, to allow a clearer understanding of the policies by the Luther Luckett Correctional Complex employees and inmate population, thereby impacting the safety and security of the institution.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 229 employees of the Luther Luckett Correctional Complex, 1,083 inmates, and all visitors to Luther Luckett Correctional Complex.

(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 institution, employees, and inmates will have to change their actions to comply with any operational changes made in the policies and procedures incorporated by reference in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated in implementing any of the policy changes.

(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 institution.

(5) Provide an estimate of how much it will cost 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: Funds budgeted for the Department of Corrections.

(7) Provide an assessment to whether an increase in fees or funding shall 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 administrative regulation establishes fees for medical and dental copays, copies of records, and personal property repair. The amendment does not change any of the fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulations 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 amendment to this regulation impacts the operation of Luther Luckett Correctional Complex.

(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 regulation generally impacts prison operations. It does include a few fees or cost repayment mechanisms which in a past year generated approximately the following in revenue: medical and dental copays $8447, records copy costs $860, and personal property repair sixty (60) dollars. The funds are returned to the general fund and reallocated to DOC.

(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 revenues generated are expected to remain similar in amounts to that listed in (a).

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Luther Luckett Correctional Complex operates, but does 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 amendment to this regulation impacts how Luther Luckett Correctional Complex operates, but is 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

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amendment)

806 KAR 6:070. Valuation of life insurance and annuity reserves.

RELATES TO: KRS 304.1-050, 304.2-290, 304.3-240, 304.06 [~~304.6-130-304.6-180~~], 304.15-410

STATUTORY AUTHORITY: 304.2-110, KRS 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-731, signed July 9, 2004, created the Office of Insurance.~~] KRS 304.2-110 authorizes the commissioner[~~executive director~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010.[~~KRS 304.6-130 requires the executive director to annually value the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts, as shown in the National Association of Insurance Commissioners (NAIC) Life and Accident and Health Annual Statement Form whether or not itemized in Exhibit 5 of that statement.~~] KRS 304.6-140 authorizes the commissioner[~~executive director~~] to promulgate administrative regulations approving any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the framework for valuation standards acceptable to the department[~~office~~], and sets out the conditions under which the department actuary[~~designated by the office~~] will verify the valuation of a company's reserves without cost to the insurer.

Section 1. Definitions.[~~As used in this administrative regulation:~~] (1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners[~~NAIC~~].

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners[~~NAIC~~].

(3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force.

(4) "2012 IAR Table" means that generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx^{2012-n}, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in Section 4(3)(i) of this administrative regulation.

(5) "2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx^{2012}.

(6) "Actuarial guidelines" mean a series of interpretive guidelines approved by the NAIC for inclusion in its Handbook for Financial Examiners.

(7) "Annual statement" means the annual statement required by KRS 304.3-240.

(8)[~~(4)~~]" Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(9) "Commissioner" is defined by KRS 304.1-050(1).

(10) "Department" is defined by KRS 304.2-050(2).

(11) "Department actuary" means the actuary employed by or contracted with the department for the purpose of making or verifying a valuation.

(12) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one (1) year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(13)[~~(5) "Executive Director" means the agency head of the Office of Insurance.~~

~~(6)~~] "Guaranteed interest contract" means a contract or contract provision in which the insurer accepts one (1) or more deposits, and on which it agrees to pay interest at one (1) or more specified rates for one (1) or more specified periods of time, but

which does not involve the contingencies of mortality or morbidity.

(14)(a)[~~(7)~~] "Life insurance policies, annuities, and pure endowment contracts[~~contract~~]" means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract.

(b) "Life insurance policies, annuities, and pure endowment contracts" shall not mean a provision through which[~~whereby~~] the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits[~~("funding agreement") is an additional benefit~~].

(15) "Period table" means a table of mortality rates applicable to a given calendar year.

(16) "Projection Scale AA (Scale AA)" means a table developed by the Society of Actuaries Group Annuity Valuation Table Task Force of annual rates, AA_x, of mortality improvement by age for projecting future mortality rates beyond calendar year 1994.

(17) "Projection Scale G2 (Scale G2)" means a table developed by the Society of Actuaries Committee on Life Insurance Research, of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

(18)[~~(8) "NAIC" is defined in KRS 304.7-012(59).~~

~~(9) "Office" means the Office of Insurance.~~

~~(10) "Office Actuary" means the actuary of the office or an actuary employed by the office for the purpose of making or verifying a valuation.~~

~~(11)~~] "Qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements of Section 7[,] of this administrative regulation.

(19)[~~(12)~~] "Reserve comparison form" means a form:

(a) Setting out three (3) year tabulations of extracts from a company's valuation; and

(b) Which is completed by plan, with subtotals by mortality table, interest assumption, and valuation method which correspond[~~corresponds~~] to the line entries in Exhibit 5 of the current annual statement.

Section 2. Filing Requirements for Domestic Insurers. (1) To facilitate the commissioner's[~~executive director's~~] evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting actuary, each insurer shall furnish the department[~~office~~] actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all contracts by basis of valuation and a reserve comparison form.

(2) Each domestic insurer shall maintain in corresponding order, with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued which shall be in readily accessible and auditable form at its home office.

Section 3. Valuation Principles. (1) Extraterritoriality. The commissioner[~~executive director~~] may question or reject any valuation made by the insurance supervisory official of another state which does not[~~appear to~~] comply with the minimum standards as provided in KRS Chapter 304.6.

(2) Nature of liabilities.[~~Most of~~] The liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts shall be generated by recognition of obligations to provide future sums of money, which are guaranteed in these contracts, and the standards of valuation set out in KRS 304.6-140 through 304.6-180, are set out in ["]prospective["] terms. If these methods are not possible to apply directly, ["]retrospective["] methods, using accumulations at appropriate rates of interest shall be acceptable; however, a company using these methods shall be prepared to demonstrate that these methods actually result in sufficient amounts to fund any obligations set out in its contracts as guarantees of future performance. Obligations which arise from known past events shall be valued retrospectively.

Section 4. Specific Requirements. (1) Interest assumptions.[~~KRS 304.6-145(4) refers to two (2) specific bond yield averages, which underlie the referenced interest rates specified in KRS 304.6-145.~~] The Moody's Corporate Bond Yield Averages referenced in KRS 304.6-145(4) are those for the period ending July 1 for each calendar year shown.[~~These were:~~

~~Calendar Year~~	~~Average over period ending July 1 of a:~~	
	~~12-month period~~	~~36-month period~~
~~1979~~	~~9.49%~~	~~8.92%~~
~~1980~~	~~11.51~~	~~9.89~~
~~1981~~	~~13.71~~	~~11.57~~
~~1982~~	~~15.70~~	~~13.64~~
~~1983~~	~~13.39~~	~~14.26~~

~~A table of current statutory calendar year interest rates shall be required each year. Copies of the most recent table may be obtained from the office.~~]

(2) The actuarial guidelines shall be used as published unless specifically prohibited by statute.

(3) Mortality tables.

(a) Except as provided in paragraph[~~paragraphs~~] (b)[~~and (c)~~] of this subsection, the 1983 Table "a" shall be[~~is~~] recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.

(b) Except as provided in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) Except as provided in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.

(d) Except as provided in paragraph (e) of this subsection, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(e) The 1983 Table "a" without projection shall be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

2. Settlements involving similar actions[~~such as worker's compensation claims~~]; or

3. Settlements of long-term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

(f)[~~(e)~~] Except as provided in paragraph (g)[~~(f)~~] of this subsection, the 1983 GAM Table and the 1983 Table "a" shall be recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(g) Except as provided in paragraph (h) of this subsection,[~~(f)~~] the 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity of pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract. The commissioner[~~executive director~~] shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If possible, the report should include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(h) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2015 under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which

produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(i)1. In using the 2012 IAR Table, the mortality rate for a person age x in year (2012 + n) shall be calculated as follows:

$$q_x^{2012+n} = q_x^{2012}(1-G2_x)^n$$

2. The resulting q_x^{2012+n} shall be rounded to three (3) decimal places per 1,000.

3. The rounding shall occur according to the formula in subparagraph 1. of this paragraph, starting at the 2012 period table rate.

4. An example page for use of this mortality table is incorporated by reference in this administrative regulation.

(j) In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) shall be calculated as follows where the q_x^{1994} and AA_x are as specified in the 1994 GAR Table:

$$q_x^{1994+n} = q_x^{1994}(1-AA_x)^n$$

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts shall be reported in [“]Exhibit 5A[”] of the annual statement in the year in which the change first takes place. [“]Exhibit 5A[”] shall show the old and the new method of valuation[,] and the increase or decrease in the actuarial reserve due to the change. If adopting a method that produces an increase in the reserve, the company shall notify the department[office]. However, if a change will produce a reserve that will be less than the amount under the old method, the company shall have the prior approval of the commissioner[executive director].

Section 5. Cost of Noncompliance. (1) If the material is not available as outlined above, the additional burden of cost for additional time required by the staff of the Department[Office] of Insurance, or its department actuary, shall be borne by the life insurance company as provided for in KRS 304.2-290. A special examination may be ordered by the commissioner[executive director], providing for a written report to him together with a time and expense billing to the company so examined.

(2) If a detail audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the department[office], the commissioner[executive director] may order the withdrawal of certification and reissuance of certificates and copies, and require a refiled[NAIC] annual statement on a significant error, or request the company to file a corrective action plan prior to the next filed annual[NAIC] statement[form] when the resultant error is not significant.

Section 6.[Severability. If any provision of this administrative regulation or the application of any provision is held to be invalid, the remainder of this administrative regulation and the application of any other provision to other persons or circumstances shall not be affected.

Section 7.] Qualified Actuary Requirements. (1) In order to be considered a qualified actuary, a person shall be familiar with the valuation requirements applicable to life and health insurance companies.

(2) The actuary shall not meet the requirements of a qualified actuary if that person has:

(a) Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted an actuarial opinion or memorandum that was rejected because it did not comply with the Kentucky Insurance Code, KRS Chapter 304, or standards established by the Actuarial Standards Board during the past five (5) years; or

(e) Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(f) Failed to notify the commissioner[executive director] of any adverse action taken against the actuary pursuant to paragraphs (a) through (e) of this subsection by any insurance regulatory official of any other state.

Section 7.[8.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "1983 Table ‘a’ (1983)";

(b) "1983 GAM Table (1983)";[and]

(c) "1994 GAR Table (9/2014)";

(d) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table", 9/2014;

(e) "2012 IAR Table", 9/2014;

(f) " Annuity 2000 Mortality Table (2000)";

(g) "Projection Scale AA (Scale AA)", 9/2014;

(h) "Projection Scale G2 (Scale G2)", 9/2014; and

(i) "Example page for use of mortality table", 9/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the Web site at: http://insurance.ky.gov[http://doi.ppr.ky.gov/kentucky/].

SHARON P. CLARK, Commissioner
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: September 5, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2014 at 9:00 a.m. (ET) 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 October 16, 2014, 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 through October 31, 2014. 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 provides annuity mortality table for use in determining reserve liabilities for annuities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to be uniform with the other states in the regulation of annuities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the regulation to provide for methods to determine premiums based on future experience. This regulation provides the calculations for future

experience.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the calculations for future experience through a generational mortality table for annuities.

(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 create a new generational mortality table to allow for changes in mortality.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be uniform with all of the other states and jurisdictions.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the regulation to provide for methods to determine premiums based on future experience. This regulation provides the calculations for future experience through a generational mortality table.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets forth a new generational mortality table to allow for ongoing changes in mortality.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 460 regulated entities will be impacted by this administrative regulation.

(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: All states and jurisdictions will have the same regulation with an effective date of January 1, 2015 so that companies can make their changes at the same time .

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is undetermined what the cost will be.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance Companies will be able to correct the premiums based on mortality change on an ongoing basis rather than every ten (10) to twenty (20) years.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially. The Department has existing staff to perform this function.

(b) On a continuing basis: There will not be a cost to implement this administrative regulation on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees nor does it directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation apply to all entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance 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 304.2-290, 304.6, 304.15-410

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will be revenue neutral. There will not be an additional cost to administer this program in the first year. Existing staff at the Department of Insurance currently perform this function.

(d) How much will it cost to administer this program for subsequent years? There will not be an additional cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this existing administrative regulation offers technical clarifications and will not have a revenue impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:010. Definitions for 902 KAR Chapter 100.

RELATES TO: KRS 211.840, 211.842-211.852, 211.990(4), 10 C.F.R. 20.1003-20.1005, NCRP Report 141, 42 U.S.C. 2011 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.844, 10 C.F.R. 20.1003-20.1005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 authorizes the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The Nuclear Regulatory Commission (NRC) approves or denies Kentucky's program for regulating radioactive materials after the effective date of administrative regulations within 902 KAR Chapter 100. The federal guidance manual, Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements - SA - 200, issued June 5, 2009, provides parameters states shall follow in order for approval. The parameters include the provision that definitions shall be identical to NRC definitions. This administrative regulation establishes definitions for 902 KAR Chapter 100.

Section 1. Definitions. (1) "A_1" and "A_2":

(a) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A_2" means the maximum activity of radioactive material, other than special form radioactive material, LSA, and SCO material, permitted in a Type A package;

(c) These values are listed in 10 C.F.R. 71, Appendix A, or may be derived under the procedure prescribed in 10 C.F.R. 71 Appendix A.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) "Accelerator" means a machine capable of accelerating

electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, such as the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) "Act" means the "Kentucky Radiation Control Act of 1978", as established in KRS 211.840.

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) "Agreement state" means a state with which the United States Nuclear Regulatory
Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, 42 U.S.C. 200 et seq., as amended (73 Stat. 689).

(10) "Airborne radioactive material" means radioactive material dispersed in the
air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations:

(a) In excess of the derived air concentrations specified in 10 C.F.R. 20 Appendix B; or

(b) That an individual present in the area without respiratory protective equipment may exceed an intake of six-tenths (0.6) percent of the annual limit on intake or twelve (12) DAC hours.

(12) "Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

(13) "Air-purifying respirator" means a respirator with an air-purifying filer, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(14) "Alert" means the notice given when an event may occur, is in progress, or has occurred that may lead to a release of radioactive material, but the release is not expected to require a response by an off-site response organization in order to protect persons offsite.

(15) "Aluminum equivalent" means the thickness of type 1100 aluminum, which is composed of at least ninety-nine (99.0) percent aluminum, 0.12 percent copper, affording the same attenuation, under specified conditions, as the material for which it is substituted.

(16) "Analytical x-ray system" means a system which utilizes x-rays for the examination of the structure of materials, such as x-ray diffraction and spectrographic equipment.

(17) "Annual limit on intake" or "ALI" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of annual intake of a given radionuclide by the reference man that would result in:

(a) A committed effective dose equivalent of five (5) rems, or 0.05 Sv; or

(b) A committed dose equivalent of fifty (50) rems, or five-tenths (0.5) Sv, to an individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are established in 10 C.F.R. 20 Appendix B.

(18) "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(19) "As low as reasonably achievable" or "ALARA" means making every reasonable effort to maintain exposures to radiation as far below the dose limits established in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take into account the state of technology, the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear energy and radioactive materials in the public interest.

(20) "Assigned protection factor" or "APF" means the expected workplace level of respirator protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration may be estimated by dividing the ambient airborne concentration by the APF.

(21) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(22) "Attenuation" means the reduction of exposure rate upon passage of radiation through matter.

(23) "Attenuation block" means a block or stack, having dimensions twenty (20) centimeters by twenty (20) centimeters by three and eight-tenths (3.8) centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(24) "Authorized medical physicist" means an individual who:

(a) Meets the requirements in 902 KAR 100:072, Sections (63) and 65(1); or

(b) Is identified as an authorized medical physicist or teletherapy physicist on:

1. A specific medical use licensee issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;

2. A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee;

3. A permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope medical use licensee; or

4. A permit issued by the U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee.

(25) "Authorized nuclear pharmacist" means a pharmacist who:

(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 66(1);

(b) Is identified as an authorized nuclear pharmacist on a:

1. Specific license issued by the cabinet, state, or U.S. Nuclear Regulatory Commission that authorizes the medical use or the practice of nuclear pharmacy;

2. Permit issued by a U.S. Nuclear Regulatory Commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;

3. Permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

4. Permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy;

(c) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(d) Is designated as an authorized nuclear pharmacist under 902 KAR 100:058, Section 9(2)(c).

(26) "Authorized user" means a physician, dentist, or podiatrist who:

(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 68(1), 69(1), 70(1), 71(1), 72(1), 74(1), 76(1), or[~~and~~] 77(1); or

(b) Is identified as an authorized user on:

1. The cabinet's, U.S. Nuclear Regulatory Commission's, or an agreement state's license that authorizes the medical use of radioactive material;

2. A permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the medical use of radioactive material;

3. A permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee of broad scope that is authorized to permit the medical use of radioactive material; or

4. A permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

(27) "Automatic exposure control" means a device that automatically controls one (1) or more technique factors in order to obtain, at a preselected location, a required quantity of radiation.

(28) "Background radiation" means radiation not under the control of the licensee, including:

(a) From cosmic sources;

(b) Naturally occurring radioactive materials;

(c) Radon that is not a decay product of source or special nuclear material; and

(d) Global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents. Background radiation shall not include radiation from radioactive materials regulated by the Cabinet for Health and Family Services.

(29) "Beam axis" means the axis of rotation of the beam limiting device.

(30) "Beam limiting device" or "collimator" means a device that provides a means to restrict the dimensions of the x-ray field.

(31) "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(32) "Beam scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

(33) "Becquerel" means a unit, in the International System of Units (SI), of measurement of radioactivity equal to one (1) transformation per second.

(34) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(35) "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver radiation at a distance to a few centimeters, by surface, intracavitary, or interstitial application.

(36) "Broker" or "waste broker" means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(37) "By-product material" means:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; or

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations shall not constitute by-product material within this definition.

(38) "Cabinet" means Cabinet for Health Services, or its duly authorized representatives.

(39) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(40) "Cabinet x-ray system" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated, not to include x-ray systems used by licensed practitioners of the healing arts. The enclosure:

(a) May be the architectural structure or may be independent of the architectural structure;

(b) Shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105; and

(c) Shall exclude personnel from its interior during the generation of x-radiation.

(41) "Calendar quarter" means between twelve (12) and fourteen (14) consecutive weeks.

(a) The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter.

(b) A licensee or registrant shall not change the method observed of determining calendar quarters, except at the beginning of a calendar year.

(42) "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(43) "Carrier" is defined by KRS 174.405(1).

(44) "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(45) "Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the U.S. Nuclear Regulatory Commission.

(46) "Certificate of Compliance" or "CoC" means the certificate issued by the U.S. Nuclear Regulatory Commission under 10 C.F.R. Part 71, which approves the design of a package for the transportation of radioactive material.

(47) "Certified cabinet x-ray system" means an x-ray system that has been certified pursuant to[~~under~~] 21 C.F.R. 1010.2 as being manufactured and assembled according to the provisions of 21 C.F.R. 1020.40.

(48) "Certified component" means a component of an x-ray system subject to 21 C.F.R. Subchapter J.

(49) "Certified system" means an x-ray system that has one (1) or more certified component.

(50) "C.F.R." means Code of Federal Regulations.

(51) "Changeable filters" means a filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical, or physical process.

(52) "Chemical description" means a description of the principal chemical characteristics of a low-level radioactive waste.

(53) "Class" or "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials shall be classified as D, W, or Y, which applies to a range of clearance half-times:

(a) For Class D (Days) of less than ten (10) days;

(b) For Class W (Weeks) from ten (10) to 100 days; and

(c) For Class Y (Years) of greater than 100 days.

(54) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

(55) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(56) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(57) "Commission" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(58) "Committed dose equivalent ($H_{T,50}$)" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(59) "Committed effective dose equivalent ($H_{E,50}$)" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \square W_T H_{T,50}$).

(60) "Computer-readable medium" means the cabinet's computer can transfer the information from the medium into its memory.

(61) "Computed tomography" or "CT" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(62) "Consignee" means the designated receiver of the shipment of low-level radioactive waste.

(63) "Consignment" means each shipment of a package or groups of packages or load of radioactive material officered by a

shipper for transport.

(64) "Constraint" or "dose constraint" means a value above which specified licensee actions are required.

(65) "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(66) "Containment system" means the assembly of components of the package intended to retain the radioactive material during transport.

(67) "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a stated reason.

(68) "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(69) "Conveyance" means:

(a) For transport by public highway or rail, a transport vehicle or large freight container;

(b) For transport by water, a vessel or a hold, compartment, or defined deck area of a vessel including a transport vehicle on board the vessel; or

(c) Transportation by an aircraft.

(70) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(71) "Criticality Safety Index" or "CSI", means the dimensionless number, rounded up to the next tenth, assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in 10 C.F.R. 71.22, 71.23, and 71.59.

(72) "Curie" means a quantity of radioactivity.

(a) One (1) curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps).

(b) Commonly used submultiples of the curie are the millicurie and the microcurie.

1. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^{7} dps.

2. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^{4} dps.

(73) "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(74) "Declared pregnant woman" means a woman who has voluntarily informed the licensee[~~her employer~~], in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no[~~not~~] longer pregnant.

(75) "Decommission" means the:

(a) Safe removal from service of a facility or site;

(b) Termination of license; and

(c) Reduction of residual radioactivity to a level permitting release of the property:

1. For unrestricted use; or

2. Under restricted conditions.

(76) "Decontamination facility" means a facility operating under the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and is not considered to be a consignee for LLW shipments.

(77) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(78) "Deep-dose equivalent (H_d)" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) (1000 mg/cm^2).

(79) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(80) "Derived air concentration" or "DAC" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one (1) ALI.

(a) "Light work" produces an inhalation rate of one and two-tenths (1.2) cubic meters (1.2m^3) of air per hour.

(b) DAC values are given in 10 C.F.R., 20 Appendix B.

(81) "Derived air concentration-hour" or "DAC-hour" means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(82) "Deuterium" means deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(83) "Diagnostic clinical procedure manual" means the collection of written procedures, methods, instructions, and precautions by which the licensee performs diagnostic clinical procedures, where each diagnostic clinical procedure:

(a) Has been approved by the authorized user; and

(b) Includes the radiopharmaceutical name, dosage, and route of administration.

(84)[~~(83)~~] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(85)[~~(84)~~] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its maximum continuous rated current for the maximum tube potential.

(86)[~~(85)~~] "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(87)[~~(86)~~] "Direct scatter radiation" means that scattered radiation that has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(88)[~~(87)~~] "Disposable container" means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility. (See also "high integrity container".) For some shipments, the disposal container may be transport package.

(89)[~~(88)~~] "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Disposal respirator may include, but not limit to a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(90)[~~(89)~~] "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(91)[~~(90)~~] "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentrations of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurements technology, survey, and statistical techniques.

(92)[~~(91)~~] "Dose" or "radiation dose" means:

(a) Absorbed dose;

(b) Dose equivalent;

(c) Effective dose equivalent;

(d) Committed dose equivalent;

(e) Committed effective dose equivalent; or

(f) Total effective dose equivalent.

(93)[~~(92)~~] "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. Estimation assumes the period of exposure to retained material to be less than fifty (50) years.

(94)[~~(93)~~] "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, the quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(95)[~~(94)~~] Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

(96)[~~(95)~~] "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring

equipment in order to determine the radiation dose delivered to the equipment.

(97)[~~(96)~~] "DOT " means the U.S. Department of Transportation.

(98)[~~(97)~~] "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = W_T H_T$).

(99)[~~(98)~~] "Embryo or fetus" means the developing human organism from conception until the time of birth.

(100)[~~(99)~~] "Energy compensation source or "ECS" means a small sealed source, with an activity not exceeding 100 microcuries (3.7 MBq), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

(101)[~~(100)~~] "Entrance or access point" means a location through which an individual may gain access to a radiation area or radioactive material, including an entry or exit portal of sufficient size to permit human entry, irrespective of its intended use.

(102)[~~(101)~~] "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.

(103)[~~(102)~~] "Environmental Protection Agency "EPA" Identification number" means the number received by a transporter following application to the EPA as required by 40 C.F.R. Part 263.

(104)[~~(103)~~] "Exclusive use" means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under the direction of the consignor or consignee.

(a) Consignor and carrier shall each ensure that loading and unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment.

(b) Consignor shall include with the shipping paper information provided to the carrier, specific written instructions for maintenance of exclusive use shipment controls.

(105)[~~(104)~~] "Exposure" means being exposed to ionizing radiation or to radioactive material.

(106)[~~(105)~~] "Exposure rate" means the exposure per unit of time.

(107)[~~(106)~~] "External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(108)[~~(107)~~] "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(109)[~~(108)~~] "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(110)[~~(109)~~] "Eye dose equivalent". See "lens dose equivalent".

(111)[~~(110)~~] "Facility" means a location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or under one (1) roof, under the same administrative control.

(112)[~~(111)~~] "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(113)[~~(112)~~] "Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

(114)[~~(113)~~] "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(115)[~~(114)~~] "Filter" means the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(116)[~~(115)~~] "Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(117)[~~(116)~~](a) "Fissile material" means the:

1. Radionuclides uranium-233, uranium-235, plutonium-239, and plutonium-241, or any combination of these radionuclides; and

2. Fissile nuclides themselves, not material containing fissile nuclides.

(b) Fissile material does not include unirradiated natural and depleted uranium; and natural or depleted uranium that has been irradiated in thermal reactors only;

(c) Fissile material also excludes certain controls as provided in 10 C.F.R. 71.15[~~70.15~~].

(118)[~~(117)~~] "Fissile material package" means a fissile material packaging together
with its fissile material contents.

(119)[~~(118)~~] "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator while worn.

(120)[~~(119)~~] "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(121)[~~(120)~~] "Fluoroscopic imaging assembly" means a component that comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(122)[~~(121)~~] "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(123)[~~(122)~~] "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(124)[~~(123)~~] "Gantry" means that part of a radiation producing machine supporting and allowing movements of the radiation head about a center of rotation.

(125)[~~(124)~~] "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(126)[~~(125)~~] "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 U.S.C. sec. 2011 et seq., that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(127)[~~(126)~~] "Generator" or means a licensee operating under the cabinet, U.S. Nuclear Regulatory Commission or an agreement state who:

(a) Is a waste generator as defined in this administrative regulation; or

(b) Is the licensee to whom waste can be attributed within the context of the Low Level Radioactive Waste Policy Amendments Act of 1985, such as, waste generated as a result of decontamination or recycle activities.

(128)[~~(127)~~] "Gonad shield" means a protective barrier for the testes or ovaries.

(129) "Graphite" means graphite with a boron equivalent content less than five (5) parts per million and density greater than one and five-tenths (1.5) grams per cubic centimeter.

(130)[~~(128)~~] "Gray" or "Gy" means the SI unit of absorbed dose. One (1) gray equals an absorbed dose of one (1) Joule/kilogram (100 rads).

(131)[~~(129)~~] "Half-value layer" or "HVL" means the thickness of specified material which attenuates the beam of radiation to one-half (1/2) of its original air kerma rate, exposure rate or absorbed dose rate. This excludes the contribution of scattered radiation, other than that which might be present initially in the beam concerned.

(132)[~~(130)~~] "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if these tests are not specifically and

individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(133)[(~~131~~)] "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds.

(134)[(~~132~~)] "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(135)[(~~133~~)] "High integrity container or "HIC" means a container commonly designated to meet the structural stability requirements of 10 C.F.R. 61.56, and to meet the U.S. Department of Transportation requirements for a Type A package.

(136)[(~~134~~)] "High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body may result in an individual receiving a dose equivalent in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or thirty (30) centimeters from a surface that the radiation penetrates.

(137)[(~~135~~)] "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(138)[(~~136~~)] "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(139)[(~~137~~)] "Image intensifier" means a device that converts instantaneously, by means of photoemissive surfaces and electronic circuitry, an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(140)[(~~138~~)] "Image receptor" means a device that transforms incident radiation into a visual image or into another form which can be made into a visual image by further transformations.

(141)[(~~139~~)] "Image receptor support" means, for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(142)[(~~140~~)] "Individual" means a human being.

(143)[(~~141~~)] "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of an individual monitoring device;

(b) Committed effective dose equivalent by:

1. Bioassay; or

2. Determination of the time-weighted air concentrations to which an individual has been exposed; or

(c) Dose equivalent by the use of survey data.

(144)[(~~142~~)] "Individual monitoring device" or "individual monitoring equipment" means a device designed to be worn by a single individual for the assessment of dose equivalent, such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, or personal ("lapel") air sampling devices.

(145)[(~~143~~)] "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(146)[(~~144~~)] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(147)[(~~145~~)] "Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(148)[(~~146~~)] "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(149)[(~~147~~)] "Irradiation" means the exposure of matter to ionizing radiation.

(150)[(~~148~~)] "Kilovolt (kV) {kilo electron volt" means the energy equal to that acquired by a particle with one (1) electron charge in passing through a potential difference of 1,000 volts in a vacuum. {Note: current convention is to use kV for photons and keV for electrons.}

(151)[(~~149~~)] "Kilovolt peak" or "kVp" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(152)[(~~150~~)] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(153)[(~~151~~)] "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly, except for the useful beam.

(154)[(~~152~~)] "Leakage technique factor" means, with respect to different tube housing assemblies:

(a) For capacitor energy storage equipment: the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential, with a charge per exposure of ten (10) milliampere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation: the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment: the maximum rated continuous tube current for the maximum rated peak tube potential.

(155)[(~~153~~)] "Lens dose equivalent" or "LDE" means the external exposure of the lens of the eye, and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(156)[(~~154~~)] "License" means a license issued by the cabinet under 902 KAR Chapter 100.

(157)[(~~155~~)] "Licensed material" means radioactive material, source material, or special nuclear material received, possessed, used, or transferred, under a general or specific license issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state.

(158)[(~~156~~)] "Light field" means the area illuminated by light, simulating the radiation field.

(159)[(~~157~~)] "Limits" or "dose limits"" means the permissible upper bounds of radiation doses.

(160)[(~~158~~)] "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(161)[(~~159~~)] "Logging assistant" means an individual who, under the personal supervision of a logging supervisor:

(a) Handles sealed sources or tracers that are not in logging tools or shipping containers; or

(b) Uses survey instruments in well-logging activities.

(162)[(~~160~~)] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(163)[(~~161~~)] "Logging tool" means a device used subsurface to perform well-logging.

(164)[(~~162~~)] "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

(165)[(~~163~~)] "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(166)[(~~164~~)] "Low-level radioactive waste" means radioactive waste not classified as:

(a) High-level radioactive waste;

(b) Transuranic waste;

(c) Spent nuclear fuel; or

(d) By-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954, 42 U.S.C. 2014.

(167)[(~~165~~)] "Low specific activity" or "LSA" means radioactive material with limited specific activity, which is nonfissile or is excepted pursuant to[~~under~~] 10 C.F.R. 71.15[~~70.15~~] and that satisfies the descriptions and limits established in paragraphs (a), (b), and (c) of this subsection. Shielding materials surrounding the LSA material shall not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one (1) of three (3) groups:

(a) LSA-I:

1. Uranium and thorium ores, uranium or thorium concentrates of these ores, and other ores containing naturally occurring radioactive nuclides that are not intended to be processed for the use of these radionuclides;

2. Solid unirradiated natural or depleted uranium or natural thorium or their solid or liquid compounds or mixtures;

3. Radioactive material for which the A_2 value is unlimited; or

4. Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed thirty (30) times the value for exempt material activity

concentration determined in 10 C.F.R. 71 Appendix A.

(b) LSA-II:

1. Water with tritium concentration up to 20.0 curies/liter (0.8 TBq/liter); or

2. Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/gram for solids and gases, and 10^{-5} A_2/gram for liquids.

(c) LSA-III: Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 C.F.R. 71.77 in which:

1. The radioactive material is distributed throughout a solid or a collection of solid objects;

2. Is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

3. The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven (7) days, would not exceed 0.1 A_2; and the average specific activity of the solid does not exceed 2 x 10^{-3} A_2/gram; and

4. The average specific activity of the solid does not exceed 2 x 10^{-3} A_2/gram.

(168)[~~(166)~~] "Low toxicity alpha emitter" means natural uranium, depleted uranium, natural thorium, uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten (10) days.

(169)[~~(167)~~] "mA" means milliampere.

(170)[~~(168)~~] "Management" means the chief executive officer or that individual's designee.

(171)[~~(169)~~] "mAs" means milliampere second.

(172)[~~(170)~~] "Maximum normal operating pressure" means the maximum gauge
pressure that would develop in the containment system in a period of one (1) year under the heat condition specified in 10 C.F.R. Part 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(173)[~~(171)~~] "Medical institution" means an organization in which several medical disciplines are practiced.

(174)[~~(172)~~] "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user.

(175)[~~(173)~~] "Member of the public" means an individual except when the individual is receiving an occupational dose.

(176)[~~(174)~~] "Microscopic analytical x-ray equipment" means a device which utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectrographic equipment.

(177)[~~(175)~~] "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(178)[~~(176)~~] "Minor" means an individual less than eighteen (18) years of age.

(179)[~~(177)~~] "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject or the wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, human research subject, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient, human research subject, or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, human research subject, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent;

3. If the calculated weekly administered dose is thirty (30) percent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient, human research subject, radioisotope, or treatment site except for permanent implant seeds that were implanted in the correct site but migrated outside the treatment site;

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient, human research subject, radiopharmaceutical, or route of administration, or if the administered dosage differs from the prescribed dosage; and

2. If the dose to the patient or human research subject exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ.

(180)[~~(178)~~] "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(181)[~~(179)~~] "Monitor unit (MU)" (See "Dose monitor unit").

(182)[~~(180)~~] "Monitoring" or "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(183)[~~(181)~~] "Moving beam radiation therapy" means radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation and rotational therapy.

(184)[~~(182)~~] "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes; that is, 100 weight percent thorium-232.

(185)[~~(183)~~] "Negative pressure respirator (tight fitting)" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(186)[~~(184)~~] "Nominal treatment distance" means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

(b) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

(187)[~~(185)~~] "Nonstochastic effect" or "deterministic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist.

(188)[~~(186)~~] "Normal form radioactive material" means radioactive material that has not been demonstrated to qualify as "special form radioactive material."

(189)[~~(187)~~] "NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(190)[~~(188)~~](a) "NRC Forms 540, 540A, 541, 541A, 542, and 542A" means official NRC forms as referenced in 902 KAR 100:021.

(b) Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information.

(c) Upon agreement between the shipper and consignee, NRC Forms 541, 541A, 542, and 542A may be completed, transmitted, and stored in electronic media.

(d) The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(191)[~~(189)~~] "Occupational dose" means dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose shall not include dose received:

(a) From background radiation;

(b) As a medical patient;

(c) From voluntary participation in a medical research program;

(d) As a member of the public; or

(e) From exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072, Section 27.

(192) "Operating procedures" means detailed written instructions, such as:

(a) Normal operation of equipment and movable shielding;

(b) Closing of interlock circuits;

(c) Manipulation of controls;

(d) Radiation monitoring procedures for personnel and areas;

(e) Testing of interlocks; and

(f) Recordkeeping requirements.

(193)[~~(190)~~] "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(194)[~~(191) "Operating procedures" means detailed written instructions, such as:~~

~~(a) Normal operation of equipment and movable shielding;~~

~~(b) Closing of interlock circuits;~~

~~(c) Manipulation of controls;~~

~~(d) Radiation monitoring procedures for personnel and areas;~~

~~(e) Testing of interlocks; and~~

~~(f) Recordkeeping requirements.~~

~~(192)~~] "Package" means the packaging together with its radioactive contents as presented for transport:

(a) Fissile material package or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package are all fissile material packaging types together with its fissile material complete.

(b) Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in 49 C.F.R. Part 173.

(c) Type B package means a Type B packaging together with its radioactive contents.

1.[~~(i)~~] On approval, a Type B package design is designated by the U.S. Nuclear Regulatory Commission as B(U) unless the package has a maximum normal operating pressure of more than 100 pounds/in^2 (700 kPa) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 C.F.R. Part 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M).

2.[~~(ii)~~] B(U) refers to the need for unilateral approval of international shipments.

3.[~~(iii)~~] B(M) refers to the need for multilaterial approval of international shipments.

4.[~~(iv)~~] There is no distinction made in how packages with these designations may be used in domestic transportation.

5.[~~(v)~~] To determine their distinction for international transportation, refer to U.S. Department of Transportation Regulations in 49 C.F.R. Part 173.

6.[~~(vi)~~] A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(195)[~~(193)~~] "Packaging" means the assembly of components necessary to ensure compliance with the requirements of 902 KAR 100:070.

(a) It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks.

(b) The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(196)[~~(194)~~] "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(197)[~~(195)~~] "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(198)[~~(196)~~] "Periodic quality assurance check" means a procedure which is performed to ensure that a previous calibration continues to be valid.

(199)[~~(197)~~] "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(200)[~~(198)~~] "Person" is defined by[~~at~~] KRS 216B.015(16).

(201)[~~(199)~~] "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(202)[~~(200)~~] "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.

(203)[~~(201)~~] "Phantom" means a volume of material behaving in a manner similar
to tissue with respect to the attenuation and scattering of radiation.

(204)[~~(202)~~] "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit which controls the duration of time the tube is activated. See "automatic exposure control".

(205)[~~(203)~~] "Physical description" means the items called for on NRC Form 541 to describe low-level radioactive waste.

(206)[~~(204)~~] "Physician" is defined by KRS 311.720(9).

(207)[~~(205)~~] "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(208)[~~(206)~~] "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(209)[~~(207)~~] "Positive pressure respirator" means a respirator in which the pressure inside the respirator inlet covering exceeds the ambient air pressure outside the respirator.

(210)[~~(208)~~] "Powered air-purifying respirator" or "PAPR" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(211)[~~(209)~~] "Preceptor" means an individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

(212)[~~(210)~~] "Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(213)[~~(211)~~] "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110.

(214)[~~(212)~~] "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110.

(215)[~~(213)~~] "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive;

(b) In the diagnostic clinical procedures manual; or

(c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(216)[~~(214)~~] "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as

documented in the written directive; [~~or~~]

(c) For manual brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive; or

(d) For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

(217)[(~~215~~)] "Primary dose monitoring system" means a system that:

(a) Monitors the useful beam during irradiation; and

(b) Terminates irradiation if a preselected number of dose monitor units have been acquired.

(218)[(~~216~~)] "Principal activities" means activities authorized by the license that are essential to achieving the purpose for which the license was issued or amended. "Principal activities" do not include:

(a) Storage during which licensed material is not accessed for use or disposal; and

(b) Activities incidental to decontamination or decommissioning.

(219)[(~~217~~)] "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency; that is, if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(220)[(~~218~~)] "Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(221)[(~~219~~)] "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency; that is, if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(222)[(~~220~~)] "Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. It shall not include radiation received:

(a) As an occupational dose;

(b) From background radiation;

(c) As a medical patient;

(d) From voluntary participation in a medical research program; or

(e) From exposure to an individual administered radioactive material and released in accordance with 902 KAR 100:072, Section 27.

(223)[(~~221~~)] "Qualified expert" means an individual who has been recognized by the cabinet to possess the knowledge and training to:

(a) Measure ionizing radiation;

(b) Evaluate safety techniques; and

(c) Advise regarding radiation protection needs.

(224)[(~~222~~)] "Qualitative fit test or "QFT" means a pass or fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(225)[(~~223~~)] "Quality factor" or "Q" means the modifying factor used to derive dose equivalent from absorbed dose.

(a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent[a]
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

[a]Absorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.

(b) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, as provided in paragraph (a) of this subsection, one (1) rem (0.01 sievert) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of twenty-five (25) million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from paragraph (c) of this subsection to convert a measured tissue dose in rads to dose equivalent in rems.

(c) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

	Neutron Energy (MeV)	Quality Factor[a] (Q)	Fluency per Unit Dose Equivalent[b] (neutrons cm^{-2} rem^{-1})
(thermal)	2.5×10^{-8}	2	980×10^{6}
	1×10^{-7}	2	980×10^{6}
	1×10^{-6}	2	810×10^{6}
	1×10^{-5}	2	810×10^{6}
	1×10^{-4}	2	840×10^{6}
	1×10^{-3}	2	980×10^{6}
	1×10^{-2}	2.5	1010×10^{6}
	1×10^{-1}	7.5	170×10^{6}
	5×10^{-1}	11	39×10^{6}
	1	11	27×10^{6}
	2.5	9	29×10^{6}
	5	8	23×10^{6}
	7	7	24×10^{6}
	10	6.5	24×10^{6}
	14	7.5	17×10^{6}
	20	8	16×10^{6}
	40	7	14×10^{6}
	60	5.5	16×10^{6}
	1×10^{2}	4	20×10^{6}
	2×10^{2}	3.5	19×10^{6}
	3×10^{2}	3.5	16×10^{6}
	4×10^{2}	3.5	14×10^{6}

[a] Value of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

[b] Monoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(226)[(~~224~~)] "Quantitative fit test "QNFT" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(227)[(~~225~~)] "Quarter" is defined by KRS 341.080(1)(b).

(228)[(~~226~~)] "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or 100 ergs per gram.

(229)[(~~227~~)] "Radiation" means ionizing radiation.

(a) It includes the following:

1. Gamma rays;
2. X-rays;
3. Alpha particles;
4. Beta particles;
5. High speed electrons;
6. Neutrons;
7. High-speed protons; and
8. Other atomic particles capable of producing ions.

(b) It excludes nonionizing radiations, such as:

1. Sound;
2. Microwaves;
3. Radiowaves; or
4. Visible, infrared, or ultraviolet light.

(c) The following are specific forms of radiation:

1. "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

2. "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, and may have been modified by a decrease in energy.

3. "Useful radiation" or "primary beam" means radiation that

passes through the window, aperture, cone, or other beam limiting device of the tube or source housing.

4. "Stray radiation" means the sum of leakage and scattered radiation.

(230)[~~(228)~~] "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may receive in excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(231)[~~(229)~~] "Radiation detector" means a device which, in the presence of radiation, by either direct or indirect means, provides a signal or other indication suitable for use in measuring one (1) or more quantities of incident radiation.

(232)[~~(230)~~] "Radiation head" means the structure from which the useful beam emerges.

(233)[~~(231)~~] "Radiation machine" means a device capable of producing radiation, except a device that produces radiation only from radioactive material.

(234)[~~(232)~~] "Radiation safety officer" means an individual who:

(a) Meets the requirements in 902 KAR 100:072, Sections 63 and 64(1) or (3)(a); or[~~Has the knowledge and responsibility to apply appropriate radiation protection administrative regulations; and~~]

(b) Is identified as a radiation safety officer on:[~~For licenses issued under 902 KAR 100:072, meets the requirements in 902 KAR 100:072, Sections 63 and 64(1) and (3)(a).~~]

1. A specific medical use licensee issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

2. A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

(235)[~~(233)~~] "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for:

(a) Localizing the volume to be exposed during radiation therapy; and

(b) Confirming the position and size of the therapeutic irradiation field.

(236)[~~(234)~~] "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(237)[~~(235)~~] "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(238)[~~(236)~~] "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(239)[~~(237)~~] "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(240)[~~(238)~~] "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of administrative regulations and license conditions.

(241)[~~(239)~~] "Radiographer's assistant" means an individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(242)[~~(240)~~] "Radiographer instructor" means a radiographer who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 14.

(243)[~~(241)~~] "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(244)[~~(242)~~] "Radiographic exposure device" means an instrument containing a sealed source fastened or contained within, in which the sealed source or its shielding may be moved, or otherwise changed, from a shielded to an unshielded position for purposes of making a radiographic exposure.

(245)[~~(243)~~] "Radiographic imaging system" means a system designed to record a permanent or semipermanent image on an image receptor by the action of ionizing radiation.

(246)[~~(244)~~] "Radiographic personnel" means a:

(a) Radiographer;

(b) Radiographer instructor; or

(c) Radiographer trainee.

(247)[~~(245)~~] "Rating" means the operating limits specified by the component manufacturer.

(248)[~~(246)~~] "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive, if a written directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than twenty (20) percent; and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than twenty (20) percent;

(e) A teletherapy radiation dose, if the calculated weekly administered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose, if the calculated administered dose differs from the prescribed dose by more than twenty (20) percent.

(249)[~~(247)~~] "Recording" means producing a permanent form of an image resulting from x-ray photons.

(250)[~~(248)~~] "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(251)[~~(249)~~] "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110.

(252)[~~(250)~~] "Registration" means registration with the cabinet under 902 KAR 100:110.

(253)[~~(251)~~] "Regulations of the U.S. Department of Transportation" means the regulations in 49 C.F.R. Parts 100-189.

(254)[~~(252)~~] "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert).

(255)[~~(253)~~] "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(256)[~~(254)~~] "Residential location" means an area where structures for human habitation are located.

(257)[~~(255)~~] "Residual radioactivity" means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

(258)[~~(256)~~] "Respiratory protective device" means an apparatus used to reduce an individual's intake of airborne radioactive materials.

(259)[~~(257)~~] "Restricted area" means an area access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(260)[~~(258)~~] "Roentgen" or "R" means the special unit of exposure. One (1) roentgen (R) equals 2.58 x 10^{-4} coulombs per

kilogram of air. See "Exposure".

(261)[~~(259)~~] "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(262)[~~(260)~~] "Sealed source" means radioactive material that is encased in a capsule[~~permanently bonded or fixed in a capsule or matrix~~] designed to prevent leakage or escape of the radioactive material.

(263)[~~(261)~~] "Secondary dose monitoring system" means a system which terminates irradiation upon failure of the primary system.

(264)[~~(262)~~] "Self-contained breathing apparatus" or "SCBA" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(265)[~~(263)~~] "Shallow-dose equivalent (H_S)", with respect to external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm^2).

(266)[~~(264)~~] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(267)[~~(265)~~] "Shielded-room radiography" means industrial radiography conducted in
a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 10.

(268)[~~(266)~~] "Shipper" means the licensed entity, the generator that offers low-level radioactive waste for transportation, and may consign the waste to a licensed waste collector, waste processor, or land disposal facility operator.

(269)[~~(267)~~] "Shipping paper" means NRC Form 540, and if required, 540A, or their equivalent, and includes the information required by the U.S. Department of Transportation in 49 C.F.R. Part 172.

(270)[~~(268)~~] "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(271)[~~(269)~~] "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) See the table in the definition of "quality factors" for the quality factors to convert absorbed dose to dose equivalent.

(272)[~~(270)~~] "Site area emergency" means the existence of situation where an event may occur, is in progress, or has occurred that may:

(a) Lead to a significant release of radioactive material; and

(b) Require a response by an off-site response organization to protect persons off site.

(273)[~~(271)~~] "Site boundary" means that line beyond which the land or property is not
owned, leased, or otherwise controlled by the licensee.

(274)[~~(272)~~] "Source" means the focal spot of the x-ray tube.

(275)[~~(273)~~] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(276)[~~(274)~~] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(277)[~~(275)~~] "Source image receptor distance" or "SID" means the distance from the source to the center of the input surface of the image receptor.

(278)[~~(276)~~] "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a physical or chemical form; or

(b) Ores that contain by weight 0.05 percent or more of:

1. Uranium;

2. Thorium; or

3. A combination of uranium and thorium.

(c) Source material does not include special nuclear material.

(279)[~~(277)~~] "Source of radiation" means a radioactive material or device, or equipment emitting or capable of producing radiation.

(280)[~~(278)~~] "Special form radioactive material" means radioactive material that satisfies the following conditions:

(a) It is a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c)1. It satisfies the test requirements specified by the NRC in 10 C.F.R. Part 71.75.

2. A special form encapsulation designed under the NRC requirements in 10 C.F.R. 71.4 in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used.

3. A special form encapsulation designed in accordance with the NRC requirements in 10 C.F.R. 71.4 in effect on March 31, 1996, and constructed before April 1, 1998 may continue to be used.

4. Any other special form encapsulation shall meet the specifications of this definition.

(281)[~~(279)~~] "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(282)[~~(280)~~] "Special nuclear material in quantities not sufficient to form a critical mass" means:

(a) Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235;

(b) U-233 in quantities not exceeding 200 grams;

(c) Plutonium in quantities not exceeding 200 grams; or

(d) A combination of them as specified by the following formula:

1. For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material.

2. The sum of these ratios for the different kinds of special nuclear material in
combination shall not exceed one (1).

3. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175\,(\text{grams contained U-235})}{350} +$$

$$\frac{50\,(\text{grams U-233})}{200} + \frac{50\,(\text{grams Pu})}{200} = 1$$

(283)[~~(281)~~] "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(284)[~~(282)~~] "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(285)[~~(283)~~] "Spot check" means a procedure performed to assure that a previous calibration continues to be valid.

(286)[~~(284)~~] "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(287)[~~(285)~~] "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(288)[~~(286)~~] "SSD" means the distance between the source and the skin of the patient.

(289)[~~(287)~~] "Stationary beam radiation therapy" means

radiation therapy without displacement of one (1) or more mechanical axes relative to the patient during irradiation.

(290)[~~(288)~~] "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose plus threshold factors.

(291)[~~(289)~~] "Storage" or "waste storage" means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(292)[~~(290)~~] "Storage area" means:

(a) A location, facility, or vehicle used to store, transport, or secure a radiographic exposure device, storage container, or sealed source if the source is not in use; and

(b) Which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(293)[~~(291)~~] "Storage container" means a device in which a sealed source is transported or stored.

(294)[~~(292)~~] "Stray radiation" means the sum of leakage and scattered radiation.

(295)[~~(293)~~] "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(296)[~~(294)~~] "Supplied-air respirator "SAR" "airline respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designated to be carried by the user.

(297)[~~(295)~~] "Surface contaminated object" or "SCO" means a solid object that is not classed as radioactive material, but which has radioactive material distributed on a surface. SCO must be in one (1) of two (2) groups with surface activity not exceeding the following limits:

(a) SCO-I: A solid object on which:

1. The nonfixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 10^{-4} microcurie/cm^2 (4 Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 10^{-5} microcurie/cm^2 (0.4 Bq/cm^2) for all other alpha emitters;

2. The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1.0 microcurie/cm^2 ($4x10^4$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 0.1 microcurie/cm^2 ($4x10^3$ Bq/cm^2) for all other alpha emitters; and

3. The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1 microcurie/cm^2 ($4x10^4$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, for 0.1 microcurie/cm^2 ($4x10^3$ Bq/cm^2) for all other alpha emitters.

(b) SCO-II: A solid object on which the limits for SCO-I are exceeded and on which:

1. The nonfixed contamination on the accessible surface averaged over 300cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 10^{-2} microcurie/cm^2 (400 Bq/cm^2) for beta and gamma and low toxicity alpha emitters or 10^{-3} microcurie/cm^2 (40 Bq/cm^2) for all other alpha emitters;

2. The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 20 microcuries/cm^2 ($8x10^5$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 2 microcuries/cm^2 ($8x10^4$ Bq/cm^2) for all other alpha emitters; and

3. The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 20 microcuries/cm^2 ($8x10^5$ Bq/cm^2) for beta and gamma and low toxicity alpha emitters, or 2 microcuries/cm^2 ($8x10^4$ Bq/cm^2) for all other alpha emitters.

(298)[~~(296)~~] "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. If appropriate, the evaluation shall include at least:

(a) A physical survey of the location of sources of radiation; and

(b) Measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(299)[~~(297)~~] "Target" means that part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation or other particles.

(300)[~~(298)~~] "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses;

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(301)[~~(299)~~] "Technically Enhanced Naturally Occurring Radioactive Material "TENORM" means N.O.R.M., which has been separated to various degrees from the original ore or other material, refining or implementing it.

(302)[~~(300)~~] "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(303)[~~(301)~~] "Teletherapy physicist" means the individual identified as the teletherapy physicist on a cabinet license.

(304)[~~(302)~~] "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(305)[~~(303)~~] "Tenth-value layer (TVL)" means the thickness of a specified material that attenuates X-radiation or gamma radiation to an extent that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

(306)[~~(304)~~] "Termination of irradiation" means the stopping of irradiation in a fashion that does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(307)[~~(305)~~] "Tests" means the process of verifying compliance with an applicable regulation.

(308)[~~(306)~~] "Therapeutic radiation machines" means x-ray or electron-producing equipment designed and used for external beam radiation therapy.

(309)[~~(307)~~] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential. Small areas of reduced protection are acceptable providing the average reading over a 100-square centimeter area at one (1) meter distance from the target does not exceed the value established in this paragraph; or

(b) For x-ray therapy equipment capable of operating at 500 kVp or above: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions. Small areas of reduced protection are acceptable providing the average reading over a 100-square centimeter area at one (1) meter distance from the target does not exceed the value established in this paragraph.

(310)[~~(308)~~] "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

(311)[~~(309)~~] "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(312)[~~(310)~~] "Total effective dose equivalent" or "TEDE" means the sum of the deep-dose equivalent (for external exposures) and

the committed effective dose equivalent (for internal exposures).

(313)[~~(311)~~] "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(314)[~~(312)~~] "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 C.F.R. 173, Subpart I.

(315)[~~(313)~~] "Transport index" means:

(a) The dimensionless number that designates the degree of control to be exercised by the carrier during transportation, rounded up to the next tenth required to be placed on the label of a package.

(b) The transport index is determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one (1) meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one (1) meter (3.3 feet).

(316)[~~(314)~~] "Treatment" or "waste treatment" means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(317) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(318)[~~(315)~~] "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons.

(319)[~~(316)~~] "Tube" means an x-ray tube, unless otherwise specified.

(320)[~~(317)~~] "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if they are contained within the tube housing.

(321)[~~(318)~~] "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(322)[~~(319)~~] "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in 10 C.F.R. 71 Appendix A, or may be determined by procedures described in 10 C.F.R. 71 Appendix A.

(323)[~~(320)~~] "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions established in 10 C.F.R. Part 71.

(324)[~~(321)~~] "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(325)[~~(322)~~] "Uniform low-level radioactive waste manifest" or "uniform manifest" means the combination of NRC Forms 540, 541, and if necessary, 542, or their equivalents, and their respective continuation sheets as needed, or equivalent.

(326)[~~(323)~~] "Unirradiated uranium" means uranium containing not more than $2x10^3$ Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235, and not more than 5×10^{-3} gram of uranium-236 per gram of uranium-235.

(327)[~~(324)~~] "U.S. Department of Energy" means the Department of Energy established by 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in 42 U.S.C. 7151, effective October 1, 1977.

(328)[~~(325)~~] "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as grinding, roasting, beneficiating, or refining.

(329)[~~(326)~~] "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material.

(330)[~~(327)~~] "Uranium - natural, depleted, enriched" means:

(a) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238);

(b) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes;

(c) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(331)[~~(328)~~] "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(332)[~~(329)~~] "Useful beam" means the radiation that passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

(333)[~~(330)~~] "User" means an individual who personally utilizes or manipulates a source of radiation.

(334)[~~(331)~~] "User seal check" or "fit check" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamylacetate check.

(335)[~~(332)~~] "Variable-aperture beam limiting device" means a beam limiting device that has capacity for stepless adjustment of the x-ray field size at a given SID.

(336)[~~(333)~~] "Vendor" means a person who sells radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110.

(337)[~~(334)~~] "Vendor registrant" means a vendor who is registered with the cabinet.

(338)[~~(335)~~] "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110.

(339)[~~(336)~~] "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a radiation source or one (1) meter from a surface that the radiation penetrates.

(340)[~~(337)~~] "Virtual source" means a point from which radiation appears to originate.

(341)[~~(338)~~] "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(342)[~~(339)~~] "Visiting authorized nuclear pharmacist" means a nuclear pharmacist who is not identified on the license of the licensee being visited.

(343)[~~(340)~~] "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(344)[~~(341)~~] "Waste". See "low-level radioactive waste".

(345)[~~(342)~~] "Waste collector" means an entity, operating under the cabinet, U.S. Nuclear Regulatory Commission or agreement state license whose principal purpose is to collect and consolidate low level waste generated by others and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(346)[~~(343)~~] "Waste description" means the physical, chemical, and radiological description of a low-level radioactive waste as

called for on NRC Form 541.

(347)[~~(344)~~] "Waste generator" means an entity, operating under the cabinet, U.S. Nuclear Regulatory Commission, or agreement state license, who:

(a) Possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(b) Transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be waste generator if the transfer of low-level radioactive waste from its facility is defined as "residual waste".

(348)[~~(345)~~] "Waste processor" means an entity, operating under a cabinet, U.S. Regulatory Commission or agreement state license, whose principal purpose is to process, repackage, or treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

(349)[~~(346)~~] "Waste type" means a waste within a disposal container having a unique physical description, such as a specific waste descriptor code or description, or a waste sorbed on or solidified in a specifically defined media.

(350)[~~(347)~~] "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(351)[~~(348)~~] "Week" means seven (7) consecutive days starting on Sunday.

(352)[~~(349)~~] "Weighting factor (W_T)", for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of (W_T) are:

Organ Dose Weighting Factors	
Organ or tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	[1]0.30
Whole Body	[2]1.00

[1]0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

[2]For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, W_T=1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis, pursuant to 10 C.F.R. Part 20, until a time as specific guidance is issued.

(353)[~~(350)~~] "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(354)[~~(351)~~] "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(355)[~~(352)~~] "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(356)[~~(353)~~] "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(357)[~~(354)~~] "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(358)[~~(355)~~] "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(359)[~~(356)~~] "Working level" or "WL" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of 1.3×10^5MeV of potential alpha particle energy.

(360)[~~(357)~~] "Working level month" or "WLM" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(361)[~~(358)~~] "Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

(362)[~~(359)~~] "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(363)[~~(360)~~] "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment is further classified as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(364)[~~(361)~~] "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

(365)[~~(362)~~] "X-ray high-voltage generator" means a device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube, high-voltage switches, electrical protective devices, and other appropriate elements.

(366)[~~(363)~~] "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(367)[~~(364)~~] "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(368)[~~(365)~~] "X-ray tube" means an electron tube designed to be used primarily for the production of x-rays.

(369)[~~(366)~~] "Year" means the period of time, beginning in January, used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant if:

(a) The change is made at the beginning of the year; and
(b) A day is not omitted or duplicated in consecutive years.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions for use in 902 KAR 100.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By adding definitions and clarifying references, it will provide clear and objective information on which to base regulatory decisions.

(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 adds the definitions of "Deuterium" and "Graphite" and corrects two errant references.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. This amendment conforms to the statue by proving definitions for its implementation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the state regulations into conformance with federal regulations, thus making administration and enforcement more effective.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 430 licensees in clarifying the understanding of regulatory terms.

(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: Licensees will need to be familiar with these new definitions. No new actions will be required as these definitions now match those in federal regulations, and licensees are familiar with (and comply with) federal regulations/definitions.

(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 associated with implementing these regulation. The licensees are currently in compliance with the federal regulations/definitions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have consistent definitions between state and 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 will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to operate this program. However, no additional funds will be required to implement this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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 impacts all state or local governments where radioactive materials are in use.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. Kentucky entered into a formal agreement with the Atomic Energy Commission (AEC), now the Nuclear Regulatory Commission (NRC) in 1962 under the authority of KRS 152.115. As an Agreement State, Kentucky is obligated to "use its best efforts to maintain continuing compatibility between its program and the program of the Commission for the regulation of like materials". Therefore, Kentucky must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS

211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 has no effect on expenditures or revenues of state and local governments.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate no revenue for state or local governments the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate no revenue for state or local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? This program will not require any increase in funding for the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not require any increase in funding for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, 10 C.F.R. 30, 10 C.F.R. 35, 10 C.F.R. 39, 10 C.F.R. 71.4

2. State compliance standards. This administrative regulation provides requirements licensees and registrants with definitions.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

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. There are no different, stricter or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840-211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 211.848(1) requires the cabinet to establish a reasonable schedule of fees and charges by administrative regulation. This administrative regulation establishes a schedule of fees and charges for radioactive material licensees;[~~licenses and~~] radiation producing machines registrants; others who may receive, possess, use, transfer, or dispose of sources of radiation; and vendors, service providers, and qualified experts providing services in Kentucky[~~and couriers or organizations responsible for the shipment of radioactive material, spent nuclear fuel, transuranic waste, or other radioactive material requiring escort through Kentucky~~].

Section 1. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule, established in subsections (1) through (4) of this section, of annual fees shall apply to radiation producing machine registrants. An application for registration or annual renewal shall be accompanied by the appropriate fee established below:

(1) A diagnostic x-ray tube; therapeutic x-ray tube capable of operating up to 150 kVp - $125;[~~or industrial x-ray tube – fifty (50) dollars.~~]

(2) A therapeutic x-ray tube capable of operating at 150 kVp or above including particle accelerators – $500;[~~fifty (50) dollars.~~]

(3) Industrial, dental, and other x-ray tubes not specified above – eighty-five (85)[~~fifty (50)~~] dollars; and[~~.~~]

(4) Shielding evaluation, per room:[~~.~~]

(a) Diagnostic facilities - $600; and[~~$200.~~]

(b) Linear accelerator - $1,500[~~$1,000~~].

Section 2. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule, established in subsections (1) through (4) of this section, shall apply to radioactive material licenses. An initial and renewal application shall be accompanied by the fee established in this section.

(1) A specific radioactive material license initial and annual fee.

(a) Human use.

1. Nuclear medicine, Imaging - $2,100;[~~$790.~~]

2. Nuclear medicine, Radiopharmaceutical therapy - $2,100;

3. Nuclear medicine, Permanent implant - $2,700;

4. Nuclear medicine, Temporary implant - $1,500;

5. Nuclear medicine, Mobile imaging - $2,500;

6. Teletherapy or Gamma Stereotactic Radiosurgery - $4,000;[~~$790.~~]

7. Broad Scope, Medical - $7,500; and

8.[~~3. Mobile scanning - $450.~~

~~4.~~] Other - $1,250;[~~$375.~~]

(b) Industrial radiography - $4,000;[~~$790.~~]

(c) Wireline service - $2,500;[~~$790.~~]

(d) Broad scope, Academic - $3,500;[~~$1,050.~~]

(e) Nuclear laundry - $7,500;[~~$1,580.~~]

(f) Irradiator.

1. Self-contained - $1,750; and[~~$390.~~]

2. Unshielded during irradiation - $4,200;[~~$1,580.~~]

(g) Manufacturing,[~~/~~] processing, or[~~/~~] distribution.

1. Industrial gauging devices - $4,500;[~~$1,310.~~]

2. In vitro-[~~/~~]In vivo kits - $3,600;[~~$1,050.~~]

3. Radiopharmaceuticals - $5,200; and[~~$1,580.~~]

4. Other - $3,600;[~~$900.~~]

(h) Industrial gauging devices:

1. Fixed - $1,100; and

2. Portable - $1,300;[~~ - $390.~~]

(i) In vitro, academic, environmental, or[~~and~~] clinical laboratory - $1,250;[~~$225.~~]

(j) Veterinary use - $2,100;[~~$375.~~]

(k) Services, such as leak testing - $1,200;[~~$260.~~]

(l) An application for review of a:

1. New sealed source or device; or

2. Custom device - $4,600[~~$1,050~~] plus the applicable fee in paragraphs (a) through (k)[~~(l)~~] of this subsection;[~~.~~]

(n) An amendment for review of a sealed source or device - $1,500;[~~$500.~~]

(o) A byproduct, source, or special nuclear material license and other approval authorizing decommissioning, decontamination, reclamation, or site restoration - $7,500;[~~$1,500.~~]

(p) A license specifically authorizing the receipt of prepackaged byproduct, source material, or special nuclear material from other persons. The license authorizes the disposal of the material by transfer to a person authorized to receive or dispose of the material - $10,000; and[~~$3,700.~~]

(q) A license specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from a person for the purpose of storage, treatment, and packaging for transfer to a person authorized to receive or dispose of radioactive material - $25,000;[~~$10,000.~~]

(2) A general radioactive material license initial and annual fee.

(a) In vitro or medical use specified in 902 KAR 100:050, Sections 4 and 5 – $1,250; and[~~Seventy-five (75) dollars.~~]

(b) Measuring, gauging, or a controlling device except emergency exit signs – $300 per device not to exceed $1,200 per use location;[~~Seventy-five (75) dollars.~~]

(3) An application to amend an existing specific license – $200; and[~~Seventy-five (75) dollars.~~]

(4) An application for initial reciprocal recognition of an out-of-state license as established by 902 KAR 100:065 – Equal to the applicable fee for an in-state licensee[~~$300~~].

Section 3. Inspection Fee. (1) The cost of a routine interval inspection shall be covered in the annual licensing renewal fee.

(2) One (1) or more additional inspections shall be conducted to ensure ongoing public health and safety if any of the following conditions established in paragraphs (a) through (d) exist:

(a) Willful neglect or careless disregard that has, or could lead to, a threat to public health and safety;

(b) Failure to take appropriate and timely action to correct documented violations of statutes, administrative regulations, or conditions of the license or permit;

(c) A substantiated violation that indicates a lack of management oversight or that the radiation safety officer is not adequately performing duties; or

(d) Repeated violations from the previous inspection.

(3) The fee for each additional inspection shall be $500.

Section 4. Shipment of Radioactive Material and Waste. The shipper or carrier shall provide full cost reimbursement within thirty (30) days of receipt of the invoice, for all escorts of shipments[~~escort prior to the shipment~~] of radioactive material, spent nuclear fuel, transuranic waste, radioactive waste, and other radioactive material or waste through Kentucky.

Section 5. Site Investigations, Remediation Projects, and Scoping Surveys. The licensee, remediation contractor, or other responsible party shall provide full cost reimbursement for review and oversight of site investigations, remediation projects, and scoping surveys to include project evaluation and planning, sample collection, analysis, and independent validation as applicable.

Section 6. Qualified Experts, Vendors and Service Providers. The following schedule, established in subsections (1) and (2) of this section, shall apply to any entity or individual seeking or maintaining a designation as a qualified expert, vendor, or service provider as defined in 902 KAR 100:010:

(1) Qualified Experts:

(a) Initial application - $100; and

(b) Annual fee - fifty (50) dollars; and

(2) Vendors and service providers - $300.

Section 7.[~~4.~~] General Requirements. (1) A general radioactive material license shall expire on July 31 following the date of issuance.

(2) A radiation producing machine registration certificate shall expire on the last day of the month, one (1) year after the date of issuance.

(3) A general radioactive material license fee shall be paid on or before July 31.

(4) A specific radioactive material license shall be renewed annually based on the expiration date stated in the license.

(5) A renewal[~~radiation producing machine registration~~] fee shall be paid within forty-five (45) days of the bill date. A payment postmarked more than forty-five (45) days of the bill date shall be subject to a $100 late payment penalty per license, device, or x-ray tube in addition to the renewal[~~registration~~] fee.

(6) Payment of a fee or other charge shall be submitted to the Radiation Health[~~and Toxic Agents~~] Branch, Cabinet for Health and Family Services, 275 East Main Street, Mailstop HS1C A[~~HS2E-D~~], Frankfort, Kentucky 40621-0001, in the form of a check or money order payable to the Kentucky State Treasurer.

(7) If a check issued for payment of the fee established in this administrative regulation is returned to the state treasurer due to insufficient funds, the payor shall resubmit payment by money order or cashier's check.

(8) A registration and licensing application fee shall be nonrefundable.

(9) Failure to submit an applicable fee established in this administrative regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

STEPHANIE MAYFIELD GIBSON, MD FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this regulation will be held October 21, 2014 at 9:00 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notice 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 administration regulation until October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone 502/564-7905, fax 502/564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a fee schedule for use by licensees, registrants, or others who may receive, possess, use, transfer, or dispose of sources of radiation, and vendors, service providers, and qualified experts providing services in Kentucky.

(b) The necessity of this administrative regulation: To establish a reasonable schedule of fees to be paid by the regulated community to offset the costs of providing statutory and regulatory oversight in accordance with the requirements of KRS 211.848.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to the establishment of a fee schedule for licensees and registrants is KRS 211.848. The administrative regulation also establishes fees and charges for others who may receive, possess, use, transfer, or dispose of sources of radiation, and vendors, service providers, and qualified experts providing services in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This proposed amended regulation will help to provide the necessary funds to cover the administrative costs of carrying out the statutory and regulatory requirements associated with the Kentucky Radiation Control Act of 1978.

(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 raises the licensing, inspection and registration fees for regulated entities; adds fees for re-inspections of facilities; adds a reimbursement requirement for remediation projects; increases the annual fee of radiation producing machine tubes; and adds a new administrative fee for vendors, service providers, and qualified experts.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to change the fee schedule for the licensing and registration of radiation producing machines and those entities that use radioactive materials. The amended regulation establishes fees for re-inspection, qualified experts, vendors and service providers. It also establishes cost reimbursement for site investigation, scoping survey, and other costs associated with remediation projects. The amended regulation eliminates disparities between in-state licensing fees and those available to out of state vendors through reciprocity. It further subdivides classifications of radiation producing machines by discipline. This fee schedule adjustment makes Kentucky more consistent with surrounding state programs and enables the costs of operating the regulatory program to be substantially covered by the regulated community. A comparison of surrounding state fees found that current Kentucky rates were, on average, 85 percent lower than surrounding states or only about 15 percent of other state fees. This amendment will adjust fees to a reasonable level to support operation of the program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.848 states that the Cabinet for Health and Family Services Secretary shall fix a reasonable schedule of fees and charges, by regulation, to be paid by applicants for registration of radiation producing machines and radioactive material licenses and for the renewal of the certificates and licenses. The secretary shall also prescribe, by regulation, a reasonable schedule of fees to be paid by registrants and licensees for inspections and environmental surveillance activities conducted by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help offset the costs associated with operation of the radiation health and safety programs and will provide funds to cover the administrative costs necessary to carry out the statutory and regulatory requirements associated with the Kentucky Radiation Control Act of 1978.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation change will adjust or establish the fees and charges for approximately 430 radioactive material licensees; 4,144 radiation producing machine registrants; and 490 vendors, service providers, and qualified experts.

(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: Radioactive material licensee holders will be required to pay additional license fees depending on their license classification. Licenses are divided into categories of use and have been subdivided by this administrative regulation amendment to better reflect the complexity of their use. Human use radioactive material licenses will increase by approximately 37 percent from previous levels, but are still lower than most comparable states. Vendors, service providers and qualified experts using radioactive materials will now be required to pay a new nominal fee for registration in one of these categories. These types of professionals currently must be recognized as part of the licensing requirements for many types of facilities. By requiring a registration of these professionals, it assists in tracking those qualified to be listed on a license. Radiation producing machines (types of x-rays) currently are charged by the number of tubes and their use. This amendment raises the cost per tube and adds additional categories of tube use.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities in question (3): Each entity will be subject to increased or newly established fees in accordance with the proposed changes to this administrative regulation. This industry is highly technical and complex in nature. Kentucky's current fee structure is not commiserate with that complexity and, even with the proposed increase, will remain lower than fees charged by surrounding states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community, along with the citizens of the Commonwealth will benefit from a better trained, equipped, and experienced regulator staff leading to more effective and efficient protection of public health and safety. Inspection by the state offers operators some assurance that all users of radioactive materials and machines will be held to consistent standards.

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

(a) Initially: There will be no additional cost to administer this program as it is currently in existence.

(b) On a continuing basis: No additional costs are anticipated on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency fees and general funds support the operation of this program. It is anticipated that the proposed fee increases will generate between $600,000 and $750,000, depending on usage and number of entities seeking licensing. This fee increase amendment will help to reduce the department's dependence on general funds, which has been necessary to supplement agency funds that have been insufficient to cover the cost of operating this program. In FY14, the cost to administer the program was $2.4 million; fees raised revenues of approximately $1.4 million, requiring the use of about $1 million in general funds. This fee increase, while not making the program self-sustaining, will help to lessen the reliance on general fund dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation amendment has been proposed in order to raise existing fees to better support the operational costs of the program and offset the current dependence on general funds. In FY14, the cost to administer the program was $2.4 million; fees raised revenues of approximately $1.4 million, requiring the use of about $1 million in general funds. This fee increase, while not making the program self-sustaining, will help to lessen the reliance on general fund dollars.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment increases existing licensing, registration, and annual fees charged to entities using and holding radioactive materials. It also creates/establishes additional categories of fees and better defines or categorizes the users of radioactive materials and machines. It puts in place an administrative fee for tracking vendors, service providers, and experts in this field.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will impact the Environment and Energy Cabinet, Transportation Cabinet, Cabinet for Health and Family Services, state and local bomb squads, Louisville Metro Police Department, Lexington Police Department, local health departments, the Justice Cabinet, state colleges and universities and local judicial centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. KRS 211.848

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 for Public Health will realize a revenue increase of approximately $600,000 to $750,000 in the first full year. Currently, fees are not sufficient to cover the cost to operate this program. In FY14, the cost to administer the program was $2.4 million; fees raised revenues of approximately $1.4 million, requiring the use of about $1 million in general funds. This fee increase, while not making the program self-sustaining, will help to lessen the reliance on general fund dollars.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, The Department for Public Health will realize a revenue increase of approximately $600,000 to $750,000. In FY14, the cost to administer the program was $2.4 million; fees raised revenues of approximately $1.4 million, requiring the use of about $1 million in general funds. This fee increase, while not making the program self-sustaining, will help to lessen the reliance on general fund dollars.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program in the first year as it is currently in existence. In FY14, the cost to administer the program was $2.4 million while fees raised revenue of approximately $1.4 million, leaving the program to operate with about $1 million in general funds. This fee increase, while not making the program self-sustaining, will help to lessen the reliance on general fund dollars.

(b) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years as it is currently in existence. In FY14, the cost to administer the program was $2.4 million while fees raised revenue of approximately $1.4 million, leaving the program to operate with about $1 million in general funds. This fee increase, while not making the program self-sustaining, will help to lessen the reliance on general fund dollars.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate.

2. State compliance standards. This standard sets fees for licensees possessing radioactive materials and for registrants using radiation producing machines.

3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:019. Standards for protection against radiation.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 20.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 173.403(m),(w), 173.421-173.424

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 C.F.R. 10.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 49 C.F.R. 173.403(m),(w), 173.421-173.424,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes standards for the protection of the user and general public against radiation exposure and establishes standards for protection against ionizing radiation resulting from activities conducted by persons issued licenses or registrations by the cabinet. This administrative regulation establishes standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person, licensee, or registrant so the total dose to an individual (including doses resulting from licensed and unlicensed radioactive material and radiation sources other than background radiation) shall not exceed the standards for protection against radiation prescribed in this administrative regulation.

Section 1. Radiation Protection Implementation. (1) This administrative regulation shall not limit actions required in order to protect against an immediate danger to public health and safety.

(2) This administrative regulation shall apply to a person licensed or registered by the cabinet to receive, possess, use, transfer, or dispose of sources of radiation.

(3) The limits in this administrative regulation shall not apply to doses due to background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or voluntary participation in medical research programs.

Section 2. Radiation Protection Programs. A person, licensee, or registrant shall:

(1) Develop, document, and implement a radiation protection program commensurate with the scope and extent of the person's activities and sufficient to ensure compliance with the provisions of this administrative regulation;

(2) Use procedures and engineering controls based upon sound radiation protection principles, to the extent practical, to achieve occupational doses and doses to members of the public that shall be as low as reasonably achievable (ALARA) pursuant to 902 KAR 100:015, Section 2;

(3) Annually review the radiation protection program content and implementation; and

(4) Establish a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, to implement the ALARA requirements of subsection (2) of this section and the requirements of Section 10 of this administrative regulation.

(a) Any constraint shall ensure that the highest dose that could be received by a person shall not exceed a dose in excess of ten (10) millirems (0.1 mSv) per year.

(b) A licensee, if required to establish these constraints, shall report any exceedance as provided in Section 40 of this administrative regulation and take appropriate corrective action to ensure against recurrence.

Section 3. Occupational Dose Limits for Adults. (1) A person, licensee, or registrant shall control the occupational dose to individual adults, except for planned special exposures as described in Section 7 of this administrative regulation, to the following dose limits:

(a) An annual limit, which shall be the more limiting of the:

1. Total effective dose equivalent being equal to five (5) rems (0.05 SV)[~~(0.50 Sv)~~]; and

2. Sum of the deep-dose equivalent and the committed dose equivalent to an individual organ or tissue, other than the lens of the eye, being equal to fifty (50) rems ((0.50) Sv).

(b) The annual limits to the lens of the eye, the skin, and the extremities, which shall be:

1. A lens dose equivalent of fifteen (15) rems (0.15 Sv); and

2. A shallow-dose equivalent of fifty (50) rems (five-tenths (0.50) Sv) to the skin of the whole body or to the skin of an extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime as described in Section 7(3)(a) and (b) of this administrative regulation.

(3) The assigned deep-dose equivalent and shallow-dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten (10) square centimeters of skin receiving the highest exposure. If the individual monitoring device was not in the region of highest potential exposure, the deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are established in 10 C.F.R., 20, Appendix B, Table 1, and shall be used to:

(a) Determine the individual's dose as required in Section 34 of this administrative regulation; and

(b) Demonstrate compliance with the occupational dose limits.

(5) In addition to the annual dose limits, the person, licensee, or registrant shall limit the soluble uranium intake by an individual to ten (10) milligrams in a week in consideration of chemical toxicity as established in 10 C.F.R., 20 Appendix B.

(6) A person, licensee, or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by a person as described in Section 32 of this administrative regulation.

Section 4. Compliance with Requirements for Summation of External and Internal Doses. (1) If a licensee or registrant is required to monitor by both Section 13(1) and (2) of this administrative regulation, the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses.

(2) If a licensee or registrant is required to monitor only by Section 13(1) or (2) of this administrative regulation, summation shall not be required to demonstrate compliance with the dose limits.

(3) A licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses by meeting one (1) of the conditions specified in subsection (5) of this section and the conditions in subsections (6) and (7) of this section.

(4) The dose equivalents for the lens of the eye, the skin, and the extremities shall not be included in the summation but shall be subject to separate limits established in Section 3 of this administrative regulation.

(5) If the only intake of radionuclides occurs by inhalation, the total effective dose equivalent limit shall not be exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one (1) of the following, does not exceed unity:

(a) Sum of the fractions of the inhalation ALI for each radionuclide;

(b) Total number of derived air concentration-hours (DAC-hours) for radionuclides divided by 2,000; or

(c) Sum of the calculated committed effective dose equivalents to significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit.

(6) If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than ten (10) percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(7) A licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and may not need to be further evaluated.

Section 5. Determination of External Dose from Airborne Radioactive Material. (1) If determining the dose from airborne radioactive material, a licensee or registrant shall include the contribution to the deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent from external exposure to the radioactive cloud.

(2) If the airborne radioactive material includes radionuclides other than noble gases or the cloud of airborne radioactive material is not relatively uniform, airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep-dose equivalent.

(3) The determination of the deep-dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

Section 6. Determination of Internal Exposure. (1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, if required by Section 13 of this administrative regulation, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in the air in work areas;

(b) Quantities of radionuclides in the body;

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) A licensee or registrant shall assume an individual inhales radioactive material at the airborne concentration in which the individual is present, unless respiratory protective equipment is used, as provided in Section 19 of this administrative regulation, or the assessment of intake is based on bioassays.

(3) If specific information on the physical and biochemical properties of the radionuclides taken into the body, or the behavior or material in an individual is known, a licensee or registrant may:

(a) Use the information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document the information in the individual's record;

(b) Upon prior approval by the cabinet, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material (for example, aerosol size distribution or density); and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a radionuclide, as provided in 10 C.F.R., 20 Appendix A, to the committed effective dose equivalent.

(4) If a licensee or registrant chooses to assess intakes of Class Y material using the measurements provided in subsection (1)(b) or (c) of this section, the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven (7) months, unless otherwise required by Section 39 or 40 of this administrative regulation, in order to permit the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of radionuclides in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be the:

(a) Sum of the ratios of the concentration to the appropriate DAC value (D, W, Y) from 10 C.F.R., 20 Appendix B, for radionuclides in the mixture; or

(b) Ratio of the total concentration for radionuclides in the mixture to the most restrictive DAC value for a radionuclide in the mixture.

(6) If the identity of radionuclides in a mixture is known, but the concentration of one (1) or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of a radionuclide in the mixture.

(7) If a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if the:

(a) Licensee or registrant uses the total activity of the mixture

in demonstrating compliance with the dose limits in Section 3 of this administrative regulation and in complying with the monitoring requirements in Section 13(2) of this administrative regulation;

(b) Concentration of a disregarded radionuclide is less than ten (10) percent of its DAC; and

(c) Sum of these percentages for the disregarded radionuclides in the mixture does not exceed thirty (30) percent.

(8) In order to calculate the committed effective dose equivalent, a licensee or registrant may assume that the inhalation of one (1) ALI or an exposure of 2,000 DAC-hours results in a committed effective dose equivalent of five (5) rems (0.05 Sv) for radionuclides having their ALIs or DACs based on the committed effective dose equivalent.

(a) If the ALI and the associated DAC are determined by the nonstochastic organ dose limit of fifty (50) rems (five-tenths (0.50) Sv), the intake of radionuclides that result in a committed effective dose equivalent of five (5) rems (0.05 Sv) (the stochastic ALI) is listed in parentheses in 10 C.F.R., 20 Appendix B. A licensee or registrant may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent.

(b) If a licensee or registrant uses the stochastic ALIs, the licensee or registrant shall also demonstrate that the limit in Section 3(1)(a)2 of this administrative regulation is met.

Section 7. Planned Special Exposures. (1) A licensee or registrant may authorize an adult worker to receive doses in addition to, and accounted for separately from the doses received under, the limits specified in Section 3 of this administrative regulation provided each of the following conditions are satisfied:

(a) The licensee or registrant authorizes a planned special exposure only in an exceptional situation if alternatives that may avoid the dose estimated to result from the planned special exposure are unavailable or impractical;

(b) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorize the planned special exposure, in writing, before the exposure occurs;

(c) Before a planned special exposure, the licensee or registrant ensures that the individuals involved are:

1. Informed of the purpose of the planned operation;

2. Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that may be involved in performing the task; and

3. Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(2) Prior to permitting an individual to participate in a planned special exposure, a licensee or registrant shall ascertain prior doses as required by Section 32(2) of this administrative regulation during the lifetime of the individual for each individual involved.

(3) Subject to Section 3(2) of this administrative regulation, a licensee or registrant shall not authorize a planned special exposure that shall cause an individual to receive a dose from planned special exposures and doses in excess of the limits to exceed:

(a) The numerical values of the dose limits in Section 3(1) of this administrative regulation in a year; and

(b) Five (5) times the annual dose limits in Section 3(1) of this administrative regulation during the individual's lifetime.

(4) A licensee or registrant shall:

(a) Maintain records of the conduct of a planned special exposure pursuant to Section 33 of this administrative regulation; and

(b) Submit a written report pursuant to Section 41 of this administrative regulation.

(5) A licensee or registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and inform the individual, in writing, of the dose within thirty (30) days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual by Section 3(1) of this administrative regulation but shall be included in evaluations required by Section 7(2) and (3) of this administrative regulation.

Section 8. Occupational Dose Limits for Minors. The annual occupational dose limits for minors shall be ten (10) percent of the annual dose limits specified for adult workers in Section 3 of this administrative regulation.

Section 9. Dose Equivalent to an Embryo or Fetus. (1) A licensee or registrant shall ensure that the dose equivalent to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five-tenths (0.5) rem (5 mSv). Recordkeeping requirements are established in Section 42 of this administrative regulation.

(2) A licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman to satisfy the limit in subsection (1) of this section.

(3) The dose equivalent to an embryo or fetus shall be taken as the sum of:

(a) The deep-dose equivalent to the declared pregnant woman; and

(b) The dose equivalent to the embryo or fetus resulting from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo or fetus is found to have exceeded five-tenths (0.5) rem (five (5) mSv), or is within 0.05 rem (five-tenths (0.5) mSv) of this dose, by the time the woman declares the pregnancy to a licensee or registrant, the licensee or registrant shall be in compliance with subsection (1) of this section if the additional dose equivalent to the embryo or fetus does not exceed 0.05 rem (five-tenths (0.5) mSv) during the remainder of the pregnancy.

Section 10. Radiation Dose Limits for Individual Members of the Public. (1) A licensee or registrant shall conduct operations to ensure that the:

(a) Total effective dose equivalent to individual members of the public from licensed, registered, and other operations shall not exceed 0.1 rem (one (1) mSv) in a year, exclusive of the dose contributions from:

1. Background radiation;

2. A medical administration the individual received;

3. An exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072, Section 27;

4. Voluntary participation in medical research programs; and

5. The licensee's or registrant's disposal of radioactive material into sanitary sewerage under 902 KAR 100:021, Section 3; and

(b) Dose in an unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with 902 KAR 100:072, Section 27, shall not exceed 0.002 rem (0.02 mSv) in one (1) hour.

(2) If a licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public specified in this section shall apply to those individuals.

(3) A licensee, registrant, or applicant for a license or registration may apply for prior authorization to operate up to an annual dose limit for an individual member of the public of five-tenths (0.5) rem (five (5) mSv). The application shall include the following information:

(a) Demonstration of the need for, and the expected duration of, operations in excess of the limit in subsection (1) of this section;

(b) A licensee's or registrant's program to assess and control dose within the five-tenths (0.5) rem (five (5) mSv) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) In addition to the provisions of this administrative regulation, a person, licensee, or registrant subject to the provisions of U.S. Environmental Protection Agency's applicable environmental radiation standards in 40 C.F.R. 190 shall comply with those standards.

(5) The cabinet may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

(6) In addition to the requirements in subsection (1)(a) of this section, a licensee may permit visitors to an individual who cannot be released under 902 KAR 100:072, Section 27, to receive a radiation dose greater than one tenth (0.1) rem (1 mSv) if:

(a) The radiation dose received does not exceed five-tenths (0.5) rem (5 mSv); and

(b) The authorized user, as defined in 902 KAR 100:010, has determined before the visit that it is appropriate.

Section 11. Compliance with Dose Limits for Individual Members of the Public. (1) To demonstrate compliance with the dose limits for individual members of the public in Section 10 of this administrative regulation, a licensee or registrant shall make or cause to be made surveys of:

(a) Radiation levels in unrestricted and controlled areas; and

(b) Radioactive materials in effluents released to unrestricted and controlled areas.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section 10 of this administrative regulation by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed operation shall not exceed the annual dose limit; or

(b) Demonstrating that:

1. The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the restricted area shall not exceed the values specified in 10 C.F.R. 20, Appendix B; and

2. If an individual were continually present in an unrestricted area, the dose from external sources shall not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (five-tenths (0.5) mSv) in a year.

(3) Upon approval from the cabinet, a licensee or registrant may adjust the effluent concentration values in 10 C.F.R., 20 Appendix B, for members of the public, to take into account the actual physical and chemical characteristics of the effluents (for example, aerosol size distribution, solubility, density, radioactive decay equilibrium, or chemical form).

Section 12. Surveys and Monitoring. (1) A licensee or registrant shall make or cause to be made, surveys that are:

(a) Necessary for the licensee or registrant to comply with the provisions in this administrative regulation; and

(b) Reasonable under the circumstances to evaluate:

1. The magnitude and extent of radiation levels;

2. Concentrations or quantities of radioactive material; and

3. The potential radiological hazards.

(2) A licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (for example, dose rate and effluent monitoring) are calibrated periodically for the radiation measured.

(3) Personnel dosimeters, except direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities, that require processing to determine the radiation doses used by licensees or registrants to comply with Section 3 of this administrative regulation, other applicable provisions of 902 KAR Chapter 100, or conditions specified in a license, shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

Section 13. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose. (1) A licensee or registrant shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this administrative regulation. At a minimum, the licensee or registrant shall monitor occupational exposure to radiation, from licensed and unlicensed, registered and unregistered radiation sources under the licensee's or registrant's control and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one (1) year from radiation sources external to the body, a dose in excess of ten (10) percent of the limits in Section 3(1) of this administrative regulation;

(b) Minors likely to receive, in one (1) year from sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of five-tenths (0.5) rem (5 mSv);

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1mSv). All of the occupational doses in Section 3 continue to be applicable to the declared pregnant worker as long as the embryo or fetus dose limit is not exceeded; and

(d) Individuals entering a high or very high radiation area.

(2) A licensee or registrant shall monitor, pursuant to Section 6 of this administrative regulation, the occupational intake of radioactive material by, and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one (1) year, an intake in excess of ten (10) percent of the applicable ALIs in 10 C.F.R., 20 Appendix B;

(b) Minors likely to receive, in one (1) year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).

Section 14. Control of Access to High Radiation Areas. (1) A licensee or registrant shall ensure that each entrance or access point to a high radiation area shall have at least one (1) of the following features:

(a) A control device that, upon entry into the area, shall cause the level of radiation to be reduced below the level an individual may receive a deep-dose equivalent of 0.1 rem (one (1) mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates;

(b) A control device that shall energize a conspicuous visible or audible alarm
signal so the individual entering the high radiation area and the supervisor of the activity shall be made aware of the entry; or

(c) Entryways that shall be locked, except during periods that access to the areas
is required, with positive control over each individual entry.

(2) In place of the controls required by subsection (1) of this section for a high radiation area, a licensee or registrant may substitute continuous direct or electronic surveillance that shall be capable of preventing unauthorized entry.

(3) A licensee or registrant may apply to the cabinet for approval of alternative methods for controlling access to high radiation areas.

(4) A licensee or registrant shall establish the controls required by subsections (1) and (3) of this section that shall not prevent individuals from leaving a high radiation area.

(5) Control shall not be required for an entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with 49 C.F.R. 100-180 if the packages will not remain in the area longer than three (3) days, and the dose rate at one (1) meter from the external surface of a package will not exceed 0.01 rem (0.1 mSv) per hour.

(6) Control of entrance or access to rooms or other areas in hospitals shall not be required solely because of the presence of patients containing radioactive material if personnel are in attendance who:

(a) Take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this administrative regulation; and

(b) Operate within the ALARA provisions of the licensee's or

registrant's radiation protection program.

(7) A registrant is not required to control entrance or access to rooms or other
areas containing sources of radiation capable of producing a high radiation area as described in this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:100, 100:115, and 100:155.

Section 15. Control of Access to Very High Radiation Areas. (1) In addition to the provisions in Section 14 of this administrative regulation, a licensee or registrant shall institute additional measures to ensure that an individual shall not be able to gain unauthorized or inadvertent access to areas in which radiation levels may be encountered at 500 rads (five (5) grays) or more in one (1) hour at one (1) meter from a radiation source or a surface through which the radiation penetrates.

(2) A registrant shall not be required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in subsection (1) of this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:100, 100:115, and 100:155.

Section 16. Control of Access to Very High Radiation Areas for Irradiators. (1) This section shall apply to radiation from sources of radiation used in sealed sources in nonself-shielded irradiators.

(2) This section shall not apply to:

(a) Sources of radiation used in teletherapy, radiography, or completely self-shielded irradiators in which the source:

1. Is both stored and operated within the same shielding radiation barrier; and

2. In the designed configuration of the irradiator is always physically inaccessible to an individual and cannot create high levels of radiation in an area that is accessible to an individual; and

(b) Sources from which the radiation shall be incidental to some other use or to nuclear reactor-generated radiation.

(3) Areas where radiation levels may exist in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a source of radiation used to irradiate materials shall meet the following requirements;

(a) An entrance or access point shall be equipped with entry control devices that:

1. Function automatically to prevent an individual from inadvertently entering the area if very high radiation levels exist;

2. Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

3. Prevent operation of the source of radiation if the source would produce radiation levels in the area that may result in a deep-dose equivalent to an individual in excess of 0.1 rem (one (1) mSv) in one (1) hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subsection (3)(a) of this section:

1. The radiation level within the area, from the source of radiation, is reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard, and at least one (1) other authorized individual who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices;

(c) A licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the source's shielded storage container:

1. The radiation level from the source of radiation shall be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals shall be generated to make potentially affected individuals aware of the hazard, and a licensee, registrant, or at least one (1) other individual who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier;

(d) If the shield for the stored source is a liquid, the licensee or registrant shall provide means to:

1. Monitor the integrity of the shield; and

2. Automatically signal loss of adequate shielding;

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of paragraphs (c) and (d) of this subsection;

(f) An area shall be equipped with devices that automatically generate conspicuous visible and audible alarm signals:

1. To alert personnel in the area before the source can be put into operation;

2. In sufficient time for an individual in the area to operate a clearly identified control device, which is installed in the area and can prevent the source from being put into operation;

(g) An area shall be controlled by use of administrative procedures and devices as are necessary to ensure that the area is cleared of personnel prior to use of the source;

(h) An area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after use of the source of radiation, the radiation level from the source of radiation in the area is below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour;

(i) The entry control devices required in paragraph (a) of this subsection shall have been tested for proper functioning as follows:

1. Daily prior to initial operation with the source of radiation, unless operations were continued uninterrupted from a previous day;

2. Prior to resumption of operation of the source of radiation after an unintended interruption; and

3. By adherence to a submitted schedule for periodic tests of the entry control and warning systems;

(j) A licensee or registrant shall not conduct operations if control devices are not functioning properly, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls; and

(k) Entry and exit portals used in transporting materials to and from the irradiation area, and not intended for use by individuals, shall be controlled by devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by an individual through these portals. Exit portals for processed materials shall be equipped to detect and signal the presence of loose radiation sources carried toward an exit to automatically prevent loose radiation sources from being carried out of the area.

(4)(a) Persons holding licenses or registrations, or applicants for licenses or registrations, for radiation sources may apply to the cabinet for approval of the use of alternative safety measures if they:

1. Are governed by the provisions of subsection (3) of this section; and

2. May be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with provisions of subsection (3) of this section (for example, those for the automatic control of radiation levels).

(b) Alternative safety measures shall provide a degree of personnel protection equivalent to those specified in subsection (3) of this section.

(c) At least one (1) of the alternative measures shall include an entry-preventing interlock control, based on a measurement of the radiation, that ensures the absence of high radiation levels before an individual may gain access to the area in which sources of radiation are used.

(5) Entry control devices required by subsections (3) and (4) of this section shall be established in a way that an individual shall not be prevented from leaving the area.

Section 17. Use of Process or Other Engineering Controls. The licensee or registrant shall use, to the extent practicable, process or other engineering controls (such as containment, decontamination, or ventilation) to control the concentration of radioactive material in air.

Section 18. Use of Other Controls. (1) If it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, a licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one (1) or more of the following means:

(a) Control of access;

(b) Limitation of exposure times;

(c) Use of respiratory protection equipment; or

(d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine if respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant may also consider the impact of respirator use on workers' industrial health and safety.

Section 19. Use of Individual Respiratory Protection Equipment. (1) If a licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(a)1. The licensee or registrant shall use only respiratory protection equipment that shall be tested and certified by the National Institute for Occupational Safety and Health (NIOSH); or

2. Prior to using equipment that has not been tested or certified by NIOSH, or for which there exists no schedule for testing or certification, the licensee or registrant shall submit to the cabinet an application for authorized use of that equipment, except as provided in this administrative regulation.

a. The application shall include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated condition of use; and

b. The material and performance characteristics shall be demonstrated either by licensee or registrant testing or on the basis of reliable test information;

(b) A licensee or registrant shall implement and maintain a respiratory protection program that shall include:

1. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

2. Surveys and bioassays, as appropriate, to evaluate actual intakes;

3. Testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

4. Written procedures regarding:

a. Respirator selection;

b. Supervision and training of respirator users;

c. Monitoring, including air sampling and bioassays;

d. Fit testing;

e. Breathing air quality;

f. Inventory and control;

g. Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

h. Recordkeeping; and

i. Limitations on periods of respirator use and relief from respirator use;

5. Determination by a physician prior to initial fitting of a face sealing respirator, and either every twelve (12) months or periodically at a frequency determined by a physician, that the individual user shall be medically fit to use the respiratory protection equipment; and

6. Fit testing, with a fit factor ten (10) times the APF for negative pressure devices and a fit factor greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one (1) year. Fit testing shall be performed with the facepiece operating in the negative pressure mode;

(c) A licensee or registrant shall issue a written policy statement on respirator usage covering the:

1. Use of process or other engineering controls, instead of respirators;

2. Routine, nonroutine, and emergency use of respirators; and

3. Periods of respirator use and relief from respirator use;

(d) A licensee or registrant shall advise a respirator user that the user may leave the area for relief from respirator use in the event of:

1. Equipment malfunction;

2. Physical or psychological distress;

3. Procedural or communication failure;

4. Significant deterioration of operating conditions; or

5. Other conditions that may require relief;

(e) A licensee or registrant, when selecting respiratory devices, shall:

1. Consider limitations appropriate to type and mode of use;

2. Provide visual correction, adequate communication, low temperature work environments, and concurrent use of other safety or radiological equipment; and

3. Use equipment in a way as not to interfere with the proper operation of the respirator;

(f) Standby rescue persons shall:

1. Be required if one-piece atmosphere-supplying suits or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself;

2. Be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards;

3. Observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means); and

4. Be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress;

(g) A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed;

(h) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by Compressed Gas Association in publication G-7.1, Commodity Specification for Air, and included in the regulations of the Occupational Safety and Health Administration (29 C.F.R. 1910.134(i)(1)(ii)(A) through (E)). Grade D quality of air criteria include:

1. Oxygen content (v/v) of 19.5-23.5 percent[~~%~~];

2. Hydrocarbon (condensed) content of five (5) milligrams per cubic meter of air or less;

3. Carbon monoxide (CO) content of ten (10) parts per million (ppm) or less;

4. Carbon dioxide content of 1,000 ppm or less; and

5. Lack of noticeable odor;

(i) The licensee or registrant shall ensure that no objects, materials, or substances, such as, facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece; and

(j)1. In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection divided by the assigned protection factor.

2. If the dose is later found to be greater than the estimated dose, the corrected value shall be used.

3. If the dose is later found to be less than the estimated dose, the corrective value may be used.

(2) The licensee shall obtain authorization from the cabinet before using assigned protection factors in excess of those specified in 10 C.F.R. 20, Appendix A. The cabinet may authorize a licensee to use higher assigned protection factors on receipt of an application that:

(a) Describes the situation for which a need exists for higher protection factors; and

(b) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

Section 20. Further Restrictions on the Use of Respiratory Protection Equipment. The cabinet may impose restrictions in addition to those in Sections 18 and 19 of this administrative regulation and 10 C.F.R. 20, Appendix A to:

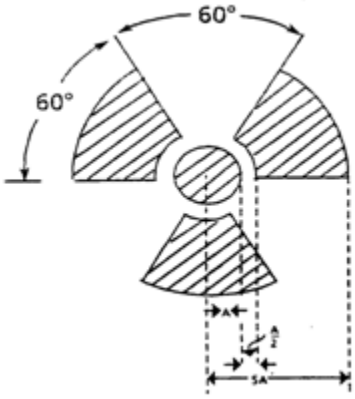
(1) Ensure that the respiratory protection program of the licensee shall be adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee shall use respiratory protection equipment instead of process or other engineering controls.

Section 21. Security of Sources of Radiation. A licensee or registrant shall secure from unauthorized removal or access, licensed materials stored in controlled or unrestricted areas.

Section 22. Control of Sources of Radiation Not in Storage. A licensee or registrant shall control and maintain constant surveillance of licensed or registered material in a controlled or unrestricted area and not in storage.

Section 23. Caution Signs and Standard Radiation Symbol. (1) Unless otherwise authorized by the cabinet, the symbol prescribed by this section shall use the colors magenta, purple, or black on yellow background. The symbol prescribed by this section shall be the three (3) bladed design:



RADIATION SYMBOL

(a) Cross-hatched area shall be magenta, purple, or black; and

(b) The background shall be yellow.

(2) Exception to color requirements for standard radiation symbol. A licensee or registrant may label sources, source holders, or device components containing sources of radiation subjected to high temperatures with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional information on signs and labels. In addition to the contents of signs and labels prescribed in this section, a licensee or registrant may provide on or near the required signs and labels additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

Section 24. Posting Requirements. (1) Posting of radiation areas. A licensee or registrant shall post a radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, RADIATION AREA".

(2) Posting of high radiation areas. A licensee or registrant shall post a high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA".

(3) Posting of very high radiation areas. A licensee or registrant shall post a very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words: "GRAVE DANGER, VERY HIGH RADIATION AREA".

(4) Posting of airborne radioactivity areas. A licensee or registrant shall post an airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA".

(5) Posting of areas or rooms in which licensed or registered material shall be used or stored. A licensee or registrant shall post an area or room in which there is used or stored an amount of licensed or registered material exceeding ten (10) times the quantity of the material specified in 902 KAR 100:030 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)".

Section 25. Exceptions to Posting Requirements. (1) A licensee or registrant shall not be required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight (8) hours if the following conditions are met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials in excess of the limits established in this administrative regulation; and

(b) The area or room are subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals occupied by patients shall not be required to be posted with caution signs pursuant to Section 24 of this administrative regulation if the patient could be released from licensee control in accordance with 902 KAR 100:072, Section 27.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source if the radiation level at thirty (30) centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

(4) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section 24 of this administrative regulation if:

(a)[~~1.~~] Access to the room is controlled pursuant to 902 KAR 100:072, Section 50; and

(b)[~~2.~~] Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this administrative regulation.

Section 26. Labeling Containers. (1) A licensee or registrant shall ensure a container of licensed or registered material bears a durable, clearly visible label with the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL".

(a) The label shall provide the following information:

1. Radionuclide present;
2. An estimate of the quantity of radioactivity;
3. Date the activity is estimated;
4. Radiation levels;
5. Kinds of materials; and
6. Mass enrichment.

(b) Information in this subsection shall permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) A licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas:

(a) Remove or deface the radioactive material label; or

(b) Clearly indicate the container no longer contains radioactive materials.

Section 27. Exemptions to Labeling Requirements. (1) A licensee or registrant shall not be required to label:

(a) Containers holding licensed or registered material in quantities less than the quantities listed in 902 KAR 100:030;

(b) Containers holding licensed or registered material in

concentrations less than those specified in 10 C.F.R. 20, Appendix B;

(c) Containers attended by an individual who takes precautions necessary to prevent the exposure of individuals in excess of the limits established by this administrative regulation;

(d) Containers if they are in transport and packaged and labeled in accordance with 49 C.F.R. Parts 100-180; or

(e) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record (for example, containers in locations that include water-filled canals, storage vaults, or hot cells). The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(f) Installed manufacturing or process equipment, such as chemical process equipment, piping, and tanks.

(2) Labeling of packages containing radioactive materials shall be required by the U.S. Department of Transportation (DOT) if the amount and type of radioactive material exceeds the limits for an excepted quantity or article pursuant to 49 C.F.R. 173.403 and 173.421-173.424.

Section 28. Procedures for Receiving and Opening Packages. (1) A licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity pursuant to 902 KAR 100:010 shall make arrangements to receive:

(a) The package if the carrier offers it for delivery; or

(b) Notification of the arrival of the package at the carrier's terminal and take possession of the package expeditiously.

(2)(a) A licensee or registrant shall monitor the external surfaces of a labeled package for:

1. Radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 902 KAR 100:010; and

2. Radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity defined in 902 KAR 100:010; and

(b) All packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of potential contamination such as packages that are crushed, wet, or damaged.

(3) A licensee or registrant shall perform the monitoring required by subsection (2) of this section as soon as practicable after receipt of the package, but not later than three (3) hours:

(a) After the package is received at the licensee's facility if received during the licensee's or registrant's normal working hours; or

(b) From the beginning of the next working day if received after working hours.

(4) A licensee or registrant shall immediately notify the final delivery carrier and the Manager of the Radiation Health Branch by telephone if:

(a) Removable radioactive surface contamination exceeds the limits of 902 KAR 100:070, Section 17; or

(b) External radiation levels exceed the limits of 902 KAR 100:070, Section 17.

(5) A licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and due consideration is given to special instructions for the type of package being opened.

(6) A licensee or registrant transferring special form sources in licensee or registrant owned or operated vehicles to and from a work site shall be exempt from the contamination monitoring requirements of subsection (2) of this section, but shall not be exempt from the survey requirement for measuring radiation levels that are required to ensure the source shall remain properly lodged in its shield.

Section 29. General Provisions for Records. (1)(a) A licensee or registrant shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of quantities on records required by this administrative regulation.

(b)1. All quantities shall be recorded as stated in paragraph (a) of this section, except that the licensee may record quantities in the International System of Units (SI) in parentheses following each of the units specified in paragraph (a) of this section.

2. Information shall be recorded in SI or in SI and units as specified in paragraph (a) of this section when recording information on shipment manifests, as required in 902 KAR 100:021, Section 9.

(2) A licensee or registrant shall make a clear distinction among the quantities entered on the records required by this administrative regulation, such as:

(a) Total effective dose equivalent;

(b) Shallow-dose equivalent;

(c) Eye dose equivalent;

(d) Deep-dose equivalent; and

(e) Committed effective dose equivalent.

Section 30. Records of Radiation Protection Programs. (1) A licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) A licensee or registrant shall retain records required by subsection (1)(a) of this section until the cabinet terminates each pertinent license requiring the record.

(3) A licensee or registrant shall retain records required by subsection (1)(b) of this section for at least three (3) years after the record is made.

Section 31. Records of Surveys. (1) A licensee or registrant shall:

(a) Maintain records showing the results of surveys and calibrations required by Sections 12 and 28(2) of this administrative regulation; and

(b) Retain records for at least three (3) years after the record is made.

(2) A licensee or registrant shall retain the following records until the cabinet terminates the pertinent license or registration requiring the record:

(a) Results of surveys to determine the dose from external sources of radiation and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents;

(b) Results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose;

(c) Results of air sampling, surveys, and bioassays required pursuant to Section 19(1)(b)1. and 2. of this administrative regulation; and

(d) Results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

Section 32. Determination of Prior Occupational Dose. (1) For an individual likely to receive, in a year, an occupational dose requiring monitoring under Section 13 of this administrative regulation, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of lifetime cumulative occupational radiation dose.

(2) Prior to permitting an individual to participate in a planned special exposure, a licensee or registrant shall determine:

(a) The internal and external doses from previous planned special exposures; and

(b) Doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of subsection (1) of this section, a licensee or registrant may:

(a) Accept, as a record of the occupational dose the individual

received during the current year, a written signed statement from the individual or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and amount of an occupational dose the individual may have received during the current year;

(b) Accept, as the record of lifetime cumulative radiation dose, an up-to-date NRC Form 4, Cumulative Occupational Dose History, or equivalent, signed by the individual and counter-signed by an:

1. Appropriate official of the most recent employer for work involving radiation exposure; or

2. The individual's current employer if the individual is not employed by the licensee or registrant; or

(c) Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer if the individual is not employed by the licensee or registrant, by telephone, telegram, electronic media, or letter. If the authenticity of the transmitted report cannot be established, a licensee or registrant shall request a written verification of the dose data.

(4) A licensee or registrant shall record the exposure history, as required by subsection (1) of this section, on NRC Form 4, Cumulative Occupational Dose History, or other clear and legible record, of the information required on that form.

(a) The form or record shall:

1. Show each period the individual received occupational exposure to radiation or radioactive material; and

2. Be signed by the individual who received the exposure.

(b) For each period a licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing NRC Form 4, Cumulative Occupational Dose History.

(c) For a period in which a licensee or registrant does not obtain a report, the licensee shall place a notation on NRC Form 4, Cumulative Occupational Dose History, indicating the periods of time for which data are not available.

(5) If a licensee is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Section 3(6) of this administrative regulation for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (twelve and five-tenths (12.5) mSv) for each quarter for which records were unavailable and the individual was engaged in activities that may have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) A licensee or registrant shall:

(a) Retain the records on NRC Form 4, Cumulative Occupational Dose History, or equivalent, at least until the cabinet terminates the pertinent license or registration requiring this record; and

(b) Retain records used in preparing NRC Form 4, Cumulative Occupational Dose History, for at least three (3) years after the record is made.

Section 33. Records of Planned Special Exposures. (1) For each use of the provisions of Section 7 of this administrative regulation for planned special exposures, a licensee or registrant shall maintain records that include:

(a) The name of the management official who authorized the planned special exposure;

(b) A copy of the signed authorization; and

(c) Description of:

1. The exceptional circumstances requiring the use of a planned special exposure;

2. What actions were necessary;

3. Why the actions were necessary;

4. How doses were maintained ALARA;

5. What individual and collective doses were expected to result; and

6. The doses actually received in the planned special exposure.

(2) A licensee or registrant shall retain the records at least until the cabinet terminates the pertinent license or registration requiring these records.

Section 34. Records of Individual Monitoring Results. (1) A licensee or registrant shall maintain records of doses received:

(a) By individuals for whom monitoring was required by Section 13 of this administrative regulation; and

(b) During planned special exposures, accidents, and emergency conditions.

(2) The recordkeeping requirements shall include, if applicable:

(a) Deep-dose equivalent to the whole body;

(b) Lens dose equivalent;

(c) Shallow-dose equivalent to the skin and extremities;

(d) Estimated intake of radionuclides;

(e) Committed effective dose equivalent assigned to the intake of radionuclides;

(f) Specific information used to calculate the committed effective dose equivalent under Section 6(1) and (3), and Section 13 if required, of this administrative regulation;

(g) Total effective dose equivalent, if required by Section 4 of this administrative regulation; and

(h) Total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose.

(3) A licensee or registrant shall make entries of the records specified in subsection (1) of this section at least annually.

(4) A licensee or registrant shall maintain the records specified in subsection (1) of this section on NRC Form 5, Occupational Dose Record for a Monitoring Period, in accordance with the instructions for NRC Form 5, or in clear and legible records containing the information required by NRC Form 5.

(5) The records required under this section shall be protected from public disclosure because of their personal privacy nature.

(6) A licensee or registrant shall maintain the:

(a) Records of dose to an embryo or fetus with the records of dose to the declared pregnant woman; and

(b) Declaration of pregnancy on file, which may be maintained separately from the dose records.

(7) A licensee or registrant shall retain each required form or record at least until the cabinet terminates the pertinent license or registration requiring the record.

(8) Assessments of dose equivalent and records made using units in effect before a licensee's or registrant's adoption of this administrative regulation need not to be changed.

Section 35. Records of Dose to Individual Members of the Public. (1) A licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

(2) A licensee or registrant shall retain the records required by subsection (1) of this section at least until the cabinet terminates the pertinent license or registration requiring the record.

Section 36. Records of Testing Entry Control Devices for Very High Radiation Areas. (1) A licensee or registrant shall maintain records of tests made under Section 16(3)(i) of this administrative regulation on entry control devices for very high radiation areas. These records shall include the date, time, and results of each test of function.

(2) A licensee or registrant shall retain the records required by subsection (1) of this section for at least three (3) years after the record is made.

Section 37. Form of Records. (1) Records required by 902 KAR Chapter 100 shall be legible throughout the specified retention period.

(2) The record shall be:

(a) The original;

(b) A reproduced copy; or

(c) A microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period.

(3) The record may be stored in electronic media with the capability for producing legible, accurate, and complete records

during the required retention period.

(4) Records such as letters, drawings, and specifications shall include pertinent information such as stamps, initials, and signatures.

(5) A licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

Section 38. Reports of Theft or Loss of Licensed or Registered Sources of Radiation. (1) Telephone reports.

(a) A licensee or registrant shall report by telephone as follows:

1. Immediately after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 902 KAR 100:030 under circumstances in which it appears to the licensee or registrant that an exposure may result to persons in unrestricted areas; or

2. Within thirty (30) days after the occurrence of lost, stolen, or missing licensed or registered material becomes known to the licensee or registrant, licensed or registered material in a quantity greater than ten (10) times the quantity pursuant to 902 KAR 100:030 still missing at this time.

(b) Reports shall be made to the cabinet.

(2) Written reports.

(a) A licensee or registrant required to make a report pursuant to subsection (1) of this section shall, within thirty (30) days after making the telephone report, make a written report setting forth the following information:

1. Description of the licensed or registered material involved, including:

a. Kind;

b. Quantity; and

c. Chemical and physical form;

2. Description of the circumstances under which the loss or theft occurred;

3. Statement of disposition, or probable disposition, of the licensed or registered material involved;

4. Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

5. Actions that have been or shall be taken to recover the material; and

6. Procedures or measures that have been or shall be adopted to ensure against a recurrence of the loss or theft of licensed or registered material.

(b) Reports shall be made to the cabinet.

(3) Subsequent to filing the written report, a licensee or registrant shall report additional substantive information on the loss or theft within thirty (30) days after the licensee or registrant learns of the information.

(4) A licensee or registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who may have received exposure to radiation shall be stated in a separate and detachable part of the report.

Section 39. Notification of Incidents. (1) Immediate notification. A licensee or registrant shall immediately report an event involving radioactive material possessed by the licensee or registrant that may have caused, or threatens to cause, one (1) or more of the following conditions:

(a) An individual may receive:

1. A total effective dose equivalent of twenty-five (25) rems (0.25 Sv) or more;

2. A lens dose equivalent of seventy-five (75) rems (0.75 Sv) or more; or

3. A shallow-dose equivalent to the skin or extremities of 250 rads (two and five-tenths (2.5) Gy) or more;

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake five (5) times the occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot-cells or process enclosure;

(c) A loss of one (1) working week or more of the operation of facilities affected; or

(d) Damage to property in excess of $200,000.

(2) Twenty-four (24) hour notification. A licensee or registrant shall, within twenty-four (24) hours of discovery of the event, report an event involving loss of control of licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or shall threaten to cause, one (1) or more of the following conditions:

(a) An individual to receive, in a period of twenty-four (24) hours:

1. A total effective dose equivalent exceeding five (5) rems (0.05 Sv);

2. A lens dose equivalent exceeding fifteen (15) rems (0.15 Sv); or

3. A shallow-dose equivalent to the skin or extremities exceeding fifty (50) rems (five-tenths (0.5) Sv);

(b) The release of radioactive material, inside or outside of a restricted area so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake in excess of one (1) occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot-cells or process enclosures;

(c) A loss of one (1) day or more of the operation of facilities affected; or

(d) Damage to property in excess of $2,000.

(3) A licensee or registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.

(4) Licensees or registrant shall make reports required by subsections (1) and (2) of this section to the cabinet by[~~:~~

~~(a)~~] telephone[~~;~~

~~(b) Telegram;~~

~~(c) Mailgram; or~~

~~(d) Facsimile~~].

(5) The provisions of this section shall not include doses that result from planned special exposures that are within the limits for planned special exposures, and are reported under Section 41 of this administrative regulation.

Section 40. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits. (1) Reportable events. In addition to the notification required by Section 39 of this administrative regulation, a licensee or registrant shall submit a written report within thirty (30) days after learning of one (1) or more of the following occurrences:

(a) An incident for which notification shall be required by Section 39 of this administrative regulation; or

(b) Doses in excess of one (1) of the following:

1. Occupational dose limits for adults in Section 3 of this administrative regulation;

2. Occupational dose limits for a minor in Section 8 of this administrative regulation;

3. Limits for an embryo or fetus of a declared pregnant woman in Section 9 of this administrative regulation;

4. Limits for an individual member of the public in Section 10 of this administrative regulation;

5. Applicable limit in the license or registration; or

6. ALARA constraints for air emissions established under Section 2(4);

(c) Levels of radiation or concentrations of radioactive material in:

1. A restricted area in excess of an applicable limit in the license or registration; or

2. An unrestricted area in excess of ten (10) times an applicable limit set forth in this administrative regulation, the license, or the registration, regardless of exposure of an individual in excess of the limits in Section 10 of this administrative regulation occurs; or

(d) For a person, agency, or licensee subject to the provisions of 40 C.F.R. 190, levels of radiation or releases of radioactive

material in excess of those standards, or conditions related to those standards.

(2) Contents of reports.

(a) A report required by subsection (1) of this section shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

1. Estimates of each individual's dose;

2. The levels of radiation and concentrations of radioactive material involved;

3. The cause of the elevated exposures, dose rates, or concentrations; and

4. Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints and environmental standards, and associated license or registration conditions.

(b) A report filed under subsection (1) of this section shall include for each individual exposed:

1. Name of the individual;

2. Social Security number; and

3. Date of birth.

(c) The report shall be prepared so that information is stated in a separate and detachable part.

(d) With respect to the limit for the embryo or fetus, the identifiers shall be of the declared pregnant woman.

(3) A licensee or registrant who makes a report under subsection (1) of this section shall submit the report, in writing, to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 41. Reports of Planned Special Exposures. (1) A licensee or registrant shall submit a written report to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days following a planned special exposure conducted in accordance with Section 7 of this administrative regulation.

(2) A licensee or registrant shall:

(a) Inform the Manager of the Radiation Health Branch that a planned special exposure was conducted;

(b) Indicate the date the planned special exposure occurred; and

(c) Provide the information required by Section 33 of this administrative regulation.

Section 42. Reports of Individual Monitoring. (1) This section shall apply to persons licensed or registered by the cabinet to:

(a) Possess or use sources of radiation for purposes of radiography authorized by 902 KAR 100:100;

(b) Receive radioactive waste from other persons for disposal pursuant to 902 KAR 100:022; or

(c) Possess or use, for processing or manufacturing for distribution required by 902 KAR 100:058, byproduct material in amounts exceeding one (1) of the following quantities:

	Quantity of Radionuclide[a] in curies
Cesium-137	1
Cobalt-60	1
Gold-198	100
Iodine-131	1
Iridium-192	10
Krypton-85	1,000
Promethium-147	10
Technetium-99m	1,000

[a]If necessary, the cabinet may require as a license or registration condition, KRS 211.842-211.852 or 902 KAR 100:015, Section 8, reports from licensees or registrants who are licensed or registered to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

(2) A licensee or registrant in a category listed in subsection (1) of this section shall:

(a) Submit an annual report of the results of individual monitoring carried out by the licensee for each individual for whom monitoring was required by Section 13 of this administrative regulation during that year; and

(b) Use Form NRC 5, Occupational Dose Record for a Monitoring Period, or other clear and legible record, which contains all the information required by Form NRC 5.

(3) A licensee or registrant may include additional data for individuals for whom monitoring may be provided, but not required.

(4) A licensee or registrant shall:

(a) File the report required by subsection (2) of this section covering the preceding year on or before April 30 of each year; and

(b) Submit the report to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 43. Protection Factors for Respirators. Protection factors shall be determined as established in 10 C.F.R. 20, Appendix A.

Section 44. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of radionuclides for occupational exposure, effluent concentrations, and concentrations for release to sanitary sewerage shall be determined as established in 10 C.F.R. 20, Appendix B.

Section 45. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Cumulative Occupational Dose History", NRC Form 4, June 2011[~~1992~~];

(b) "Occupational Dose Record for a Monitoring Period", NRC Form 5, June 2011[~~1992~~]; and

(c) "Commodity Specification for Air", August 2004.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this regulation will be held October 21, 2014 at 9:00 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notice 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 administration regulation until October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards for the protection against radiation.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended their regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:019 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the

promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations thereby ensuring that Kentucky licensees are bound by the same requirements as their counterparts across the country.

(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 corrects a type-o in the Total Effective Dose Equivalent SI conversion.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: See KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. This amendment conforms to that requirement by bring state regulations into conformance with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the state regulations into compliance with 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 will assist all 430 licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All license holders will need to be aware of the new requirements in this regulation. However, the license holders are already familiar with the amendments/components of this regulation as they are consistent with those found in federal regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will not require any cost of compliance for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have consistent regulations between state and federal agencies.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is operated with general funds. No additional funds will be required to implement or enforce this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will impact the Environment and Energy Cabinet, Transportation Cabinet, Cabinet for Health and Family Services, state and local bomb squads, Louisville Metro Police Department, Lexington Police Department, local health departments, the Justice Cabinet, state colleges and universities and local judicial centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. Kentucky entered into a formal agreement with the Atomic Energy Commission (AEC), now the Nuclear Regulatory Commission (NRC) in 1962 under the authority of KRS 152.115. As an Agreement State, Kentucky is obligated to "use its best efforts to maintain continuing compatibility between its program and the program of the Commission for the regulation of like materials". Therefore, Kentucky must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 regulation will have no effect on the expenditures or revenues of state and local governments

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated the first year for state and local governments by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this regulation for state and local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? It will not cost any additional funds to administer this regulation the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the program to administer this regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:042. Decommissioning and financial surety.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 20.1401-20.1406, 30, Appendices A-E, 30.35, 30.36, 40.36, 70.25, 15 U.S.C. 2B, 78m

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to regulate the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for decommissioning and financial assurance of radioactive material licensees.

Section 1. General Provisions and Scope. (1) This administrative regulation shall apply to the decommissioning and financial assurance requirements of a facility licensed under 902 KAR 100:040 or 100:022, as well as other facilities subject to the cabinet's jurisdiction under KRS 211.842 to 211.852. For a low-level waste disposal facility licensed pursuant to[~~under~~] 902 KAR 100:022, the criteria for decommissioning shall apply to only an ancillary surface facility that supports radioactive waste disposal activities.

(2) This administrative regulation shall not apply to a site that has:

(a) Been decommissioned prior to the effective date of this administrative regulation;

(b) Previously submitted and received cabinet approval on a license termination or decommissioning plan prior to the effective date of this administrative regulation; or

(c) Submitted a license termination or decommissioning plan with an application, as required by 902 KAR 100:040, Section 7.

(3) After a site has been decommissioned and the license terminated in accordance with this administrative regulation, the cabinet shall require additional cleanup if, based on new information, it determines that necessary criteria were not met and residual radioactivity at the site may result in significant threat to public health and safety.

(4) To calculate Total Effective Dose Equivalent (TEDE) to the average member of the critical group, the licensee shall determine the peak annual TEDE dose expected within the first 1,000 years after decommissioning.

Section 2. Radiological Criteria for Unrestricted Use. (1) A site shall be considered acceptable for unrestricted use if:

(a) The residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed twenty-five (25) millirem (0.25 mSv) per year, including radioactivity from groundwater sources of drinking water; and

(b) The residual radioactivity has been reduced to As Low as Reasonably Achievable (ALARA) levels.

(2) Determination of ALARA levels shall take into account every foreseeable potential detriment that may result from decontamination and waste disposal.

Section 3. Criteria for License Termination Under Restricted Conditions. The cabinet shall terminate a license under restricted conditions if one (1) or more of the following circumstances exist at the site:

(1) The licensee demonstrates that further reductions in residual radioactivity necessary to comply with Section 2 of this administrative regulation:

(a) May result in net public or environmental harm; or

(b) The residual levels associated with restricted conditions are ALARA. Determination of ALARA levels shall take into account every foreseeable potential detriment that may result from decontamination and waste disposal;

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed twenty-five (25) mrem (0.25 mSv) per year;

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for necessary control and maintenance of the site. Acceptable financial assurance mechanisms shall include:

(a) Funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control, as described in Section 15(2)(a) of this administrative regulation;

(b) Surety method, insurance, or other guarantee method as described in Section 15(2)(b) of this administrative regulation;

(c) For a federal, state, or local government licensee, a statement of intent as described in Section 15(2)(d) of this administrative regulation; or

(d) For a governmental entity assuming custody and ownership of a site, an arrangement deemed acceptable by the governmental entity.

(4) The licensee has submitted a decommissioning or license termination plan to the cabinet indicating the licensee's intent to decommission in accordance with Section 14(1) of this administrative regulation and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the plan how the advice of potentially affected individuals and institutions in the community has been sought, analyzed, and incorporated, as appropriate.

(a) A licensee proposing to decommission by restricting use of the site shall seek advice from potentially- affected parties, as follows:

1. If institutional controls proposed by the licensee:

a. Provides reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed twenty-five (25) mrem (0.25 mSv) TEDE per year;

b. Are enforceable; and

c. Will not impose undue burdens on the local community or other affected parties.

2. If the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for necessary control and maintenance of the site;

(b) In seeking advice on the issues identified in paragraph (a) of this subsection, the licensee shall provide for:

1. Participation by representatives of a broad cross section of potentially-affected community interests;

2. An opportunity for a comprehensive, collective discussion on the issues by the participants; and

3. A publicly available summary of the results of the discussions, including a description of the participants' viewpoints and the extent of agreement and disagreement among the participants; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and shall not exceed:

(a) 100 mrem (1 mSv) per year; or

(b) 500 mrem (5 mSv) per year, if the licensee:

1. Demonstrates that further reductions in residual radioactivity necessary to comply with the value in subsection (5)(a) of this section are not technically achievable, are prohibitively expensive, or may result in net public or environmental harm;

2. Makes provisions for durable institutional controls;

3. Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, to:

a. Carry out periodic rechecks of the site at least every five (5) years to assure that the institutional controls remain in place as necessary to meet the criteria established in subsection (2) of this

section; and

b. Assume and carry out responsibilities for necessary control and maintenance of the institutional controls. Acceptable financial assurance mechanisms shall be as established in subsection (3) of this section.

Section 4. Alternate Criteria for License Termination. (1) The cabinet may terminate a license using alternate criteria greater than the dose criterion established in Sections 2 and 3(2) or (4)(a)1a of this administrative regulation, if the licensee:

(a) Submits an analysis of possible sources of exposure in support of assurance that:

1. Public health and safety continues to be protected; and

2. It is unlikely that the dose from manmade sources combined, other than medical, are more than the 100 mrem/year (1 mSv/y) limit of 902 KAR 100:019, Section 10(1)(a);

(b) Has employed restrictions on site use, to the extent practical, according to the provisions of Section 3 of this administrative regulation;

(c) Reduces doses to ALARA levels, taking into consideration potential detriments expected to result from decontamination and waste disposal; and

(d) Has submitted a decommissioning or license termination plan to the cabinet indicating the licensee's intent to decommission in accordance with Section 14(1) of this administrative regulation, and specifying that the licensee proposes to decommission by use of alternate criteria.

1. The licensee shall document in the plan how the advice of potentially-affected individuals and institutions in the community has been sought, analyzed, and addressed, as appropriate.

2. In seeking advice, the licensee shall provide for:

a. Participation by representatives of a broad cross section of potentially-affected community interests;

b. An opportunity for a comprehensive, collective discussion on the issues by the participants; and

c. A publicly available summary of the results of discussions, including a description of the participant's viewpoints and the extent of agreement and disagreement among the participants.

(2) The use of alternate criteria to terminate a license requires the approval of the cabinet, after consideration of recommendations that address comments provided by state and federal agencies and public comments submitted pursuant to Section 5 of this administrative regulation.

Section 5. Public Notification and Public Participation. Upon receipt of a license termination or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Section 3 or 4 of this administrative regulation, or if the cabinets determines a notice to be in the public interest, the cabinet shall:

(1) Notify and solicit comments from:

(a) Local and state governments in the vicinity of the site; and

(b) Other state and federal agencies, if the licensee proposes to release a site pursuant to Section 4 of this administrative regulation.

(2) Publish a notice to solicit comments from potentially affected parties. Publication shall be in a medium readily accessible to individuals in the vicinity of the site, and may be:

(a) Local newspaper;

(b) Letters to state and local organizations; or

(c) Other appropriate media.

Section 6. Minimization of Contamination. An applicant for a license or for an amendment in its entirety shall:

(1) Describe in the application how facility design and procedures for operation shall minimize contamination of the facility and the environment to the extent practicable;

(2) Facilitate eventual decommissioning; and

(3) Minimize the generation of radioactive waste, to the extent practicable.

Section 7. Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee shall provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Obtaining a parent company to guarantee the availability of funds for decommissioning costs; and

(b) A demonstration that the parent company meets financial requirements.

(2) Financial test.

(a) To pass the financial test, the parent company shall meet one (1) of the following criteria:

1. The parent company shall have:

a. Two (2) of the following three (3) ratios:

(i) A ratio of total liabilities to net worth less than two (2);

(ii) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); or

(iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5);

b. Net working capital and tangible net worth each at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used;

c. Tangible net worth of at least $10,000,000; and

d. Assets located in the United States amounting to at least ninety (90) percent of the total assets or at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used; or

2. The parent company shall have:

a. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or AAA, AA, A, or BAA as issued by Moody's;

b. Tangible net worth each at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used;

c. Tangible net worth of at least $10,000,000; and

d. Assets located in the United States amounting to at least ninety (90) percent of the total assets or at least six (6) times the current decommissioning cost estimates for the total of facilities or parts of the facilities, or prescribed amount if a certification is used; or

(b) The parent company's independent certified public accountant shall compare the data used by the parent company in the financial test, which shall be derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. The licensee shall inform the cabinet, within ninety (90) days, of matters coming to the auditor's attention that cause the auditor to believe that:

1. The data specified in the financial test requires adjustment; and

2. The company no longer passes the test.

(c)1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2.a. If the parent company no longer meets the requirements of subsection (2)(a) of this section, the licensee shall notify the cabinet of its intent to establish alternate financial assurance.

b. The notice shall be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements.

c. The licensee shall provide alternate financial assurance within 120 days after the end of a fiscal year.

(3) Parent company guarantee. The terms of a parent company guarantee that an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor notifies the licensee and the cabinet, by certified mail, return receipt requested, of cancellation. Cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation as evidenced by the return receipts.

(b) If the licensee fails to provide sufficient alternate financial assurance within ninety (90) days after receipt by the licensee and

cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide an alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license.

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee shall include an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Section 8. Criteria Relating to Use of Financial Tests and Self-guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Furnishing its own guarantee of funds available for decommissioning costs pursuant to subsection (3) of this section; and

(b) A demonstration that the company passes the financial test established in subsection (2) of this section.

(2) Financial test.

(a) To pass the financial test, a company shall meet the following criteria:

1. Tangible net worth shall be at least ten (10) times the total current decommissioning cost estimate for the total of facilities or parts of the facilities or the current amount required if certification is used.

2. Assets located in the United States shall amount to at least ninety (90) percent of total assets or at least ten (10) times the total current decommissioning cost estimate for the total of facilities or parts of the facilities or the current amount required if certification is used.

3. A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet the following additional requirements:

1. The company shall have at least one (1) class of equity securities registered pursuant to 15 U.S.C. 2B.

2. The company's independent certified public accountant shall compare the data used by the company in the financial test, which shall be derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. The licensee shall inform the cabinet, within ninety (90) days, of matters coming to the attention of the auditor that cause the auditor to believe that:

a. The data specified in the financial test requires adjustment; and

b. The company no longer passes the test.

3. After the initial financial test, the company shall repeat passage of the test within ninety (90) days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of paragraph (a) of this subsection, the licensee shall notify the cabinet immediately of its intent to establish alternate financial assurance within 120 days of the notice.

(3) Company self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide that:

(a) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the cabinet. Cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the cabinet, as evidenced by the return receipt.

(b) The licensee shall provide alternative financial assurance as specified in 902 KAR Chapter 100 within ninety (90) days following receipt by the cabinet of a notice of cancellation of the guarantee.

(c) The guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put into effect by the licensee.

(d) The licensee shall promptly forward to the cabinet and the licensee's independent auditor the reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of 15 U.S.C. 78m.

(e) If the licensee's most recent bond issuance ceases to be rated "A" or above by either Standard and Poor's or Moody's, the licensee shall notify to the cabinet, in writing, within twenty (20) days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated "A" or above by both Standard and Poor's and Moody's, the licensee shall no longer meet the requirements of subsection (2)(a) of this section.

(f) An applicant or licensee shall provide to the cabinet a written commitment by a corporate officer stating that the licensee shall fund and carry out the required decommissioning activities or, upon issuance of an order by the cabinet, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

Section 9. Criteria Relating To Use of Financial Tests and Self-guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies that Have No Outstanding Rated Bonds. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Furnishing its own guarantee of the availability of funds for decommissioning costs pursuant to subsection (3) of this section; and

(b) A demonstration that the company passes the financial test established in subsection (2) of this section.

(2) Financial test.

(a) To pass the financial test a company shall meet the following criteria:

1. Tangible net worth greater than $10,000,000, or at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used, whichever is greater, for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

2. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

3. A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than one and five-tenths (1.5).

(b) A company shall also meet the following financial requirements:

1. The company's independent certified public accountant shall compare the data used by the company in the financial test, which shall be derived from the independently audited year-end financial statement based on United States generally accepted accounting practices, for the latest fiscal year with the amounts in the financial statement. The licensee shall inform the cabinet within ninety (90) days of matters that cause the auditor to believe that:

a. The data specified in the financial test requires adjustment; and

b. The company no longer passes the test.

2. After the initial financial test, the company shall repeat passage of the test within ninety (90) days after the close of each succeeding fiscal year.

3.a. If the licensee no longer meets the requirements of paragraph (a) of this subsection, the licensee shall notify the cabinet of intent to establish alternative financial assurance.

b. The notice shall be sent by certified mail, return receipt requested, within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements.

c. The licensee shall provide alternative financial assurance within 120 days after the end of the fiscal year.

(3) Company self-guarantee. The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(a) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the cabinet. Cancellation shall not occur until an alternative financial assurance mechanism is in place.

(b) The licensee shall provide alternative financial assurance, as specified in this administrative regulation, within ninety (90) days following receipt by the cabinet of a notice of cancellation of the guarantee.

(c) The guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put into effect by the licensee.

(d) An applicant or licensee shall provide to the cabinet a written commitment by a corporate officer stating that the licensee shall fund and carry out the required decommissioning activities or, upon issuance of an order by the cabinet, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

Section 10. Criteria Relating to Use of Financial Tests and Self-guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based upon:

(a) Furnishing its own guarantee of the availability of funds for decommissioning costs; and

(b) A demonstration that the applicant or licensee passes the financial test established in subsection (2) of this section.

(2) Financial test.

(a) A college or university shall meet either of the following criteria:

1. For an applicant or licensee that issues bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

2. For an applicant or licensee that does not issue bonds, unrestricted endowment consisting of assets located in the United States of at least $50,000,000, or at least thirty (30) times the total current decommissioning cost estimate, or the current amount required if certification is used, whichever is greater, for decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(b) A hospital shall meet the following criteria:

1. For an applicant or licensee that issues bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's; or

2. For an applicant or licensee that does not issue bonds:

a. The result of total revenues minus total expenditures divided by total revenues shall be equal to or greater than 0.04;

b. Long term debt divided by net fixed assets shall be less than or equal to 0.67;

c. The sum of current assets plus depreciation funds, divided by current liabilities, shall be greater than or equal to 2.55; and

d. Operating revenues shall be at least 100 times the total current decommissioning cost estimate, or the current amount required if certification is used, for decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

(c) A licensee shall meet the following requirements:

1. A licensee's independent certified public accountant shall compare the data used by the licensee in the financial test, which shall be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. The licensee shall inform the cabinet, within ninety (90) days, of matters coming to the attention of the auditor that cause the auditor to believe that:

a. The data specified in the financial test requires adjustment; and

b. The licensee no longer passes the test.

2. After the initial financial test, a licensee shall repeat passage of the test within ninety (90) days after the close of each succeeding fiscal year.

3. If a licensee no longer meets the requirements of subsection (1) of this section, the licensee shall notify the cabinet of its intent to establish alternative financial assurance. The notice shall be sent by certified mail, return receipt requested, within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of the fiscal year.

(3) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide that:

(a) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the cabinet. Cancellation shall not occur unless an alternative financial assurance mechanism is in place.

(b) The licensee shall provide alternative financial assurance, as specified in this administrative regulation, within ninety (90) days following receipt by the cabinet of a notice of cancellation of the guarantee.

(c) The guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put into effect by the licensee.

(d) An applicant or licensee shall provide to the cabinet a written commitment by a corporate officer or officer of the institution stating that the licensee shall:

1. Fund and carry out the required decommissioning activities; or

2. Upon issuance of an order by the cabinet, set up and fund a trust in the amount of current cost estimates for decommissioning.

(e) If the licensee's most recent bond issuance ceases to be rated "A" or above by either Standard and Poor's or Moody's, the licensee shall notify the cabinet, in writing, within twenty (20) days after publication of the change by the rating service.

Section 11. Financial Assurance and Recordkeeping for Decommissioning for Radioactive Material. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities in Section 16 of this administrative regulation shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(b) A decommissioning funding plan shall also be submitted if a combination of isotopes is involved, and if R divided by 10^5 is greater than one (1) (known as the "unity rule"), where R is defined as the sum of the ratios of the quantity of an isotope to the applicable value in Section 16 of this administrative regulation.

(c) A holder of, or applicant for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities in Section 16, or if a combination of isotopes is involved if R, divided by 10^{12} is greater than one (1) (known as the "unity rule"), where R is defined as the sum or the ratios of the quantity of an isotope to the applicable value in Section 16 of this administrative regulation, shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(2) An applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in subsection (4) of this section shall:

(a) Submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation; or

(b) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subsection (4) of this section, using one (1) of the methods described in Section 15 of this administrative regulation. For an applicant, the certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued, but before the receipt of licensed material. If an applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation shall be submitted to the cabinet

before receipt of licensed material. If an applicant does not defer execution of the financial instrument, the applicant shall submit to the cabinet, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation.

(3)(a) A holder of a specific license of a type described in subsection (1) or (2) of this section, shall provide financial assurance for decommissioning in accordance with the criteria established in this section.

(b) A holder of a specific license of a type described in subsection (1) of this section shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria established in this section. If a licensee submits a certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in an application for license renewal.

(c) A holder of a specific license of a type described in subsection (2) of this section shall submit a decommissioning funding plan as described in Section 15 of this administrative regulation, or a certification of financial assurance for decommissioning in accordance with the criteria established in this section.

(d) A waste collector or waste processor, as defined in 902 KAR 100:010, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Section 15 of this administrative regulation. The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material that could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 902 KAR 100:019. The decommissioning funding plan shall be submitted by December 3, 2006.

(4) The following is a list of required amounts of financial assurance for decommissioning, listed by quantity of radioactive material:

(a) Greater than 10^4 but less than or equal to 10^5 times the applicable quantities established in Section 16 of this administrative regulation, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^4 is greater than one (1) but R divided by 10^5 is less than or equal to one (1), the amount shall be $1,125,000.

(b) Greater than 10^3 but less than or equal to 10^4 times the applicable quantities established in Section 16 of this administrative regulation, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^3 is greater than one (1) but R divided by 10^4 is less than or equal to one (1), the amount shall be $225,000.

(c) Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities established in Section 16 of this administrative regulation, in sealed sources or plated foils. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^{10} is greater than one (1), the amount shall be $113,000.

(d)1. A licensee required to submit the $1,125,000 amount shall do so by June 30, 2010.

2. A licensee required to submit the $113,000 or $225,000 amount shall do so by June 30, 2010.

3. A licensee having possession limits exceeding the upper bounds of this list shall base financial assurance on a decommissioning funding plan.

Section 12. Financial Assurance and Recordkeeping for Decommissioning for Source Material. Criteria for providing financial assurance for decommissioning, except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or radioactive material at sites formerly associated with such milling, shall be as follows:

(1) An applicant for a specific license authorizing the possession and use of more than 100 millicuries (mCi) of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(2) An applicant for a specific license authorizing possession and use of quantities of source material greater than ten (10) millicuries (mCi) but less than or equal to 100 millicuries (mCi) in a readily dispersible form shall submit:

(a) A decommissioning funding plan as described in Section 15(1) of this administrative regulation; or

(b) A certification that financial assurance for decommissioning has been provided in the amount of $225,000 using one (1) of the methods described in Section 15 of this administrative regulation.

1. The certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued, but before the receipt of licensed material.

2. If an applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation shall be submitted to the cabinet prior to receipt of licensed material.

3. If an applicant does not defer execution of the financial instrument, the applicant shall submit to the cabinet, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation.

(c)1. A holder of a specific license covered by subsection (1) of this section or by this subsection, shall provide financial assurance for decommissioning in accordance with the criteria established in this section.

2. A holder of a specific license of a type described in subsection (1) of this section shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation, or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000, in accordance with the criteria in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in an application for license renewal.

3. A holder of a specific license of a type described in this subsection shall submit a decommissioning funding plan, as described in Section 15(1) of this administrative regulation, or a certification of financial assurance for decommissioning in accordance with the criteria established in this section.

Section 13. Financial Assurance and Recordkeeping for Decommissioning for Special Nuclear Material. (1)(a) An applicant for a specific license of the type authorizing the possession and use of unsealed nuclear material in quantities exceeding 10^5 times the applicable quantity established in Section 16 of this administrative regulation shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation.

(b) A decommissioning funding plan shall be submitted if a combination of isotopes is involved, and if R divided by 10^5 is greater than one (1) (known as the "unity rule"), where R is the sum of the ratios of the quantity of each isotope to the applicable value in Section 16 of this administrative regulation.

(2) An applicant for a specific license authorizing possession and use of unsealed special nuclear material in quantities specified in subsection (4) of this section, shall submit:

(a) A decommissioning funding plan as described in Section 15(1) of this administrative regulation; or

(b) A certification that financial assurance for decommissioning has been provided in an amount established in subsection (4) of this section, using one (1) of the methods described in Section 15 of this administrative regulation.

1. The certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued, but before the receipt of licensed material.

2. If an applicant defers execution of the financial instrument until after the license has been issued, a signed original of the

financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation shall be submitted to the cabinet before receipt of licensed material.

3. If an applicant does not defer execution of the financial instrument, the applicant shall submit to the cabinet, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Section 15 of this administrative regulation.

(3)(a) A holder of a specific license that is of a type described in subsection (1) of this section, shall provide financial assurance for decommissioning in accordance with the criteria established in this section.

(b) A holder of a specific license of a type described in subsection (1) of this section shall submit a decommissioning funding plan as described in Section 15(1) of this administrative regulation, or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000, in accordance with the criteria established in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in an application for license renewal.

(c) Each holder of a specific license of a type described in subsection (1) of this section shall submit:

1. A decommissioning funding plan, described in Section 15(1) of this administrative regulation; or

2. A certification of financial assurance for decommissioning, in accordance with the criteria established in this section.

(4) The following is a table of required amounts of financial assurance for decommissioning, listed by quantity of material:

(a) Greater than 10^4 but less than or equal to 10^5 times the applicable quantities established in Section 16 of this administrative regulation. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^4 is greater than one (1) but R divided by 10^5 is less than or equal to one (1), the amount shall be
$1,125,000.

(b) Greater than 10^3 but less than or equal to 10^4 times the applicable quantities established in Section 16 of this administrative regulation. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10^3 is greater than one (1) but R divided by 10^4 is less than or equal to one (1), the amount shall be $225,000.

(c) A licensee having possession limits exceeding the upper bounds of this section shall base financial assurance on a decommissioning funding plan.

Section 14. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas. (1) Within sixty (60) days of the occurrence one (1) of the following events, a licensee shall notify the cabinet in writing and shall either begin decommissioning its site, separate building, or outdoor area containing residual radioactivity, so that the building or outdoor area is suitable for release in accordance with cabinet requirements established in this administrative regulation, or shall submit within twelve (12) months of notification a decommissioning plan, if required by subsection (4)(a) of this section, and shall begin decommissioning upon approval of that plan if:

(a) The license has expired pursuant to 902 KAR 100:040, Section 7;

(b) The licensee has decided to permanently cease principal activities, as established in this section, at the entire site, in a separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is unsuitable for release in accordance with cabinet requirements established in this administrative regulation;

(c) Principal activities under the license have not been conducted for a period of twenty-four (24) months; or

(d) Principal activities have not been conducted for a period of twenty-four (24) months in a separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is unsuitable for release in accordance with cabinet requirements.

(2) Coincident with the notification required by subsection (1) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Sections 11, 12, and 13 of this administrative regulation in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased or decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to subsection (4)(d)5 of this section.

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so within one year (1) after the effective date of this administrative regulation.

(b) Following approval of the decommissioning plan, and with cabinet approval, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(3)(a) The cabinet may grant a request to extend the time periods established in this section if the cabinet determines that an extension is not detrimental to public health or safety and is in the public interest.

(b) The request shall be submitted at least thirty (30) days before the notification required by subsection (1) of this section.

(c) The schedule for decommissioning established in subsection (1) of this section shall not commence until the cabinet has made a determination on the request.

(4)(a) A decommissioning plan shall be submitted if required by a license condition or if the procedures and activities necessary to carry out decommissioning of the site, a separate building, or outdoor area have not been approved by the cabinet previously, and the decommissioning procedures may increase potential risk to the health or safety of workers or to the public, as in the following cases:

1. Procedures involving techniques not applied routinely during cleanup or maintenance operations;

2. Workers entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

3. Procedures potentially resulting in significantly greater airborne concentrations of radioactive materials than are present during operation; or

4. Procedures potentially resulting in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The cabinet may approve an alternate schedule for submittal of a decommissioning plan required pursuant to subsection (1) of this section if the cabinet determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to public health or safety, and is in the public interest.

(c) A procedure with a potential health or safety impact, including a procedure listed in paragraph (a) of this subsection, shall not be carried out prior to approval of the decommissioning plan.

(d) A proposed decommissioning plan for a site, separate building, or outdoor area shall include:

1. A description of the conditions of the site, separate building, or outdoor area sufficient to evaluate the acceptability of the plan;

2. A description of planned decommissioning activities;

3. A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

4. A description of the planned final radiation survey;

5. An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

6. For decommissioning plans calling for completion of decommissioning later than twenty-four (24) months after plan approval, a justification for the delay based on the criteria in subsection (6) of this section.

(e) The proposed decommissioning plan shall be approved by the cabinet if the information demonstrates completion as soon as practicable and adequate protection for the health and safety of

workers and the public.

(5)(a) A licensee shall complete decommissioning of the site, separate building, or outdoor area as soon as practicable, but within twenty-four (24) months following the initiation of decommissioning, except as provided in subsection (6) of this section.

(b) If decommissioning involves the entire site, the licensee shall request license termination as soon as practicable, but within twenty-four (24) months following the initiation of decommissioning, except as provided in subsection (6) of this section.

(6) The cabinet shall approve a request for an alternative schedule for completion of decommissioning of the site, separate building, or outdoor area, and license termination if appropriate, if the cabinet determines that the alternative is warranted by consideration of the following:

(a) If it is technically feasible to complete decommissioning within the allotted twenty-four (24) month period;

(b) If sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted twenty-four (24) month period;

(c) If a significant volume reduction in wastes requiring disposal can be achieved by allowing short-lived radionuclides to decay;

(d) If a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) Other site-specific factors, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that may result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(7) As the final step in decommissioning, the licensee shall:

(a) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed cabinet Form RPS-10, incorporated by reference in 902 KAR 100:040, or equivalent information; and

(b) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning established in Sections 1 through 6 of this administrative regulation. The licensee shall, as appropriate:

1. Report levels:

a. Of gamma radiation in units of microroentgen (μR) (millisieverts, mSv) per hour at one (1) meter from surfaces;

b. Of radioactivity, including alpha and beta, in units of disintegrations per minute, microcuries (megabecquerels) per 100 square centimeters removable and fixed radiation for surfaces;

c. Microcuries (megabecquerels) per milliliter for water; and

d. Picocuries (Becquerels) per gram for solids such as soils or concrete; and

2. Specify the survey instruments used and certify that each instrument is properly calibrated and tested.

(8) Specific licenses, including expired licenses, shall be terminated by written notice to the licensee if the cabinet determines that:

(a) Radioactive material has been properly disposed of;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) A radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning established in Sections 1 through 6 of this administrative regulation;

(d) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning established in Sections 1 through 6 of this administrative regulation; or

(e) Records required by 902 KAR 100:040, Section 7(3)(e), and Section 15(3) of this administrative regulation have been received.

Section 15. Financial Assurance Methods. (1) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from subsection (2) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed three (3) years. The decommissioning funding plan shall also contain:

(a) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(b) A signed original of the financial instrument obtained to satisfy the requirements of subsection (2) of this section.

(2) Financial assurance for decommissioning shall be provided by one (1) or more of the following methods:

(a) A prepayment deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds may be sufficient to pay decommissioning costs. Prepayment shall be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method.

1. These methods guarantee that decommissioning costs shall be paid.

2. A surety method shall be in the form of a surety bond, letter of credit, or line of credit.

3. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Section 7 of this administrative regulation.

4. A parent company guarantee shall not be used in combination with another financial method to satisfy the requirements of this section.

5. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used. If used, the guarantee and test shall be in accordance with Section 8 of this administrative regulation.

6. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are in accordance with Section 9 of this administrative regulation.

7. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are in accordance with Section 10 of this administrative regulation.

8. A guarantee by the applicant or licensee shall not be used in combination with another financial method used to satisfy the requirements of this section, or in a situation in which the applicant or licensee has a parent company holding majority control of the voting stock of the company.

9. A surety method, or insurance used to provide financial assurance for decommissioning, shall contain the following conditions:

a. The surety method or insurance shall be open-ended or, if written for a specified term, shall be renewed automatically unless the issuer notifies the cabinet, the beneficiary, and the licensee at least ninety (90) days prior to the renewal date of its intention not to renew. The surety method or insurance shall provide that the full face amount be paid to the beneficiary automatically, prior to expiration, without proof of forfeiture, if the licensee fails to provide a replacement acceptable to the cabinet within thirty (30) days after receipt of notification of cancellation.

b. The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the cabinet. An acceptable trustee shall include an appropriate state or federal government agency or an entity that has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal or state agency.

c. The surety method or insurance shall remain in effect until the cabinet has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in

the sinking fund.

1. An external sinking fund shall be a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control, in which the total amount of funds may be sufficient to pay decommissioning costs at the time termination of operation is expected.

2. An external sinking fund shall be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

3. The surety or insurance provisions shall be as stated in subsection (2)(b) of this section.

(d) For a federal, state, or local government licensee, a statement of intent containing a cost estimate for decommissioning or an amount based on the tables in Sections 11, 12, and 13 of this administrative regulation and indicating that funds for decommissioning shall be obtained as necessary.

(e) If a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by the governmental entity.

(3)(a) Each person licensed pursuant to[~~under~~] 902 KAR 100:040 shall keep records of information pertinent to the decommissioning of a facility in an identified location until the site is released for unrestricted use.

(b) Before licensed activities shall be transferred or assigned in accordance with 902 KAR 100:040, Section 6, a licensee shall transfer the records described in this subsection to the new licensee.

(c) The new licensee shall be responsible for maintaining these records until the license is terminated.

(d) If records pertinent to the decommissioning of a facility are kept for other purposes, reference to the records and their locations shall be used.

(e) Information the cabinet considers pertinent to decommissioning shall consist of:

1. Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site.

a. The records may be limited to instances in which contamination remains after a cleanup procedure or if there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete.

b. The records shall include all known information on identification of involved nuclides, quantities, forms, and concentrations.

2. As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used, or stored, and of locations of possible inaccessible contamination, such as buried pipes, which may be subject to contamination.

a. If required drawings are referenced, each relevant document need not be indexed individually.

b. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

3. A list contained in a single document and updated every two (2) years, except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having half-lives of less than sixty-five (65) days, or depleted uranium used only for shielding or as penetrators in unused munitions:

a. Areas designated and formerly designated restricted areas as defined in 902 KAR 100:010, Section 1. For requirements prior to January 26, 1994, see 902 KAR 100:010, Section 1 contained in the 1990 edition of 902 KAR Chapter 100;

b. Areas outside of restricted areas that require documentation under subsection (3) of this section;

c. Areas outside of restricted areas where current and previous wastes have been buried as documented under 902 KAR 100:021, Section 11; and

d. Areas outside of restricted areas that contain material so that, if the license expired, the licensee shall be required to either decontaminate the area to meet the criteria for decommissioning in this administrative regulation or to apply for approval for disposal under 902 KAR 100:021, Section 2.

4. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 16. Quantities1 of Licensed Material.

Materials	Microcuries
Americium-241	.01
Antimony-122	100
Antimony-124	10
Antimony-125	10
Arsenic-73	100
Arsenic-74	10
Arsenic-76	10
Arsenic-77	100
Barium-131	10
Barium-133	10
Barium-140	10
Bismuth-210	1
Bromine-82	10
Cadmium-109	10
Cadmium-115m	10
Cadmium-115	100
Calcium-45	10
Calcium-47	10
Carbon-14	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Cesium-131	1,000
Cesium-134m	100
Cesium-134	1
Cesium-135	10
Cesium-136	10
Cesium-137	10
Chlorine-36	10
Chlorine-38	10
Chromium-51	1,000
Cobalt-58m	10
Cobalt-58	10
Cobalt-60	1
Copper-64	100
Dysprosium-165	10
Dysprosium-166	100
Erbium-169	100
Erbium-171	100
Europium-152 9.2h	100
Europium-152 13 yr	1
Europium-154	1
Europium-155	10
Fluorine-18	1,000
Gadolinium-153	10
Gadolinium-159	100
Gallium-72	10
Germanium-71	100
Gold-198	100
Gold-199	100
Hafnium-181	10
Holmium-166	100
Hydrogen-3	1,000
Indium-113m	100
Indium-114m	10
Indium-115m	100
Indium-115	10
Iodine-125	1
Iodine-126	1
Iodine-129	0.1

Iodine-131	1
Iodine-132	10
Iodine-133	1
Iodine-134	10
Iodine-135	10
Iridium-192	10
Iridium-194	100
Iron-55	100
Iron-59	10
Krypton-85	100
Krypton-87	10
Lanthanum-140	10
Lutetium-177	100
Manganese-52	10
Manganese-54	10
Manganese-56	10
Mercury-197m	100
Mercury-197	100
Mercury-203	10
Molbdenum-99	100
Neodymium-147	100
Neodymium-149	100
Nickel-59	100
Nickel-63	10
Nickel-65	100
Niobium-93m	10
Niobium-95	10
Niobium-97	10
Osmium-185	10
Osmium-191m	100
Osmium-191	100
Osmium-193	100
Palladium-103	100
Palladium-109	100
Phosphorus-32	10
Platinum-191	100
Platinum-193m	100
Platinum-193	100
Platinum-197m	100
Platinum-197	100
Plutonium-239	.01
Polonium-210	0.1
Potassium-42	10
Praseodymium-142	100
Praseodymium-143	100
Promethium-147	10
Promethium-149	10
Radium-226	.01
Rhenium-186	100
Rhenium-188	100
Rhodium-103m	100
Rhodium-105	100
Rubidium-86	10
Rubidium-87	10
Ruthenium-97	100
Ruthenium-103	10
Ruthenium-105	10
Ruthenium-106	1
Samarium-151	10
Samarium-153	100
Scandium-46	10
Scandium-47	100
Scandium-48	10
Seleium-75	10
Silicon-31	100
Silver-105	10
Silver-110m	1
Silver-111	100
Sodium-24	10

Strontium-85	10
Strontium-89	1
Strontium-90	0.10[~~0.12~~]
Strontium-91	10
Strontium-92	10
Sulphur-35	100
Tantalum-182	10
Technetium-96	10
Technetium-97m	100
Technetium-97	100
Technetium-99m	100
Technetium-99	10
Tellurium-125m	10
Tellurium127m	10
Tellurium-127	100
Tellurium-129m	10
Tellurium-129	100
Tellurium-131m	10
Tellurium-132	10
Terbium-160	10
Thallium-200	100
Thallium-201	100
Thallium-202	100
Thallium-204	10
Thorium (natural)1	100
Thulium-170	10
Thulium-171	10
Tin-113	10
Tin-125	10
Tungsten-181	10
Tungsten-185	10
Tungsten-187	100
Uranium (natural)2	100
Uranium-233	.01
Uranium-234 -- Uranium-235	.01
Vandium-48	10
Xenon-131m	1,000
Xenon-133	100
Xenon-135	100
Ytterbium-175	100
Yttrium-90	10
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10
An alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	.01
A radionuclide other than an alpha emitting radionuclides, not listed above, or mixtures of beta emitters of unknown composition	.1

[1]Based on alpha disintegration rate of Th-232, Th-230 and their daughter products.

[2]Based on alpha disintegration rate of U-238, U-234, and U-235.

Note: For purposes of 902 KAR 100:021, Section 3, if there is involved a combination of isotopes in known amounts, the limit for the combination shall be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope if not in combination. The sum of such ratios for all the isotopes in the combination shall not exceed one ("1") ("unity").

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation is used to establish levels of radioactive material possession and use at which a licensee must set aside a specified sum of money to be used for site decommissioning. This is meant to indemnify the state in the event a licensee becomes unable or unwilling to fulfill its obligation to properly dispose of licensed radioactive material and waste. It also establishes criteria for carrying out a site decommissioning.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:042 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes levels of radioactive material possession and use at which a licensee must set aside a specified sum of money to be used for site decommissioning. It also establishes criteria for carrying out a site decommissioning.

(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: Strontium-90 has a limit of .12 in the existing regulation while all other isotopes have a value that is on a base 10 structure. This change updates the regulation to give Strontium-90 a limit of .10. Additionally this change will make it mirror the limit in 10 C.F.R. 30, Appendix B which is the Nuclear Regulatory Commission equivalent regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is being promulgated so this regulation is in compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. This amendment updates requirements of license holders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is being promulgated so this regulation is in compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended, a requirement of the statutes

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation only applies to licensees who meet the financial surety criterion. This administrative regulation will assist all 430 licensees in clarifying the understanding of regulatory requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All license holders will need to be aware of the new requirements in this regulation. However, the license holders, to be in compliance with federal regulations, currently meet these criteria.

(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 regulated entities to comply with the amendments to this regulation as they currently meet these criteria in order to be in compliance with federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from uniformity between state and federal regulations, thereby making compliance less complicated.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost will be incurred as a result of amending 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: The administrative body will not require an increase in fees or funding to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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 particular change will only affect licensees that have a license for and possess Strontium-90, specifically the Cabinet for Health and

Family Services and the Energy and Environment Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:042 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 is no revenue impact on state or local agencies as a result of this 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? No revenue will be generated by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this regulation.

(c) How much will it cost to administer this program for the first year? No additional costs are associated with administering this program.

(d) How much will it cost to administer this program for subsequent years? No additional costs are associated with administering this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 C.F.R. 20.1401 through 20.1406, 10 C.F.R. 30.35 and 30.36, Appendices A through E of 10 C.F.R. 30, 10 C.F.R. 40.36, and 10 C.F.R. 70.25 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This administrative regulation prescribes requirements for decontamination, decommissioning and financial surety requirements for radioactive material licensees.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring compatibility with U.S. Nuclear Regulatory Commission's requirements for decontamination, decommissioning, and financial surety requirements for radioactive material licensees.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation provides requirements which are equivalent to the U.S. Nuclear Regulatory Commission's regulatory requirement.

CABINET FOR HEALTH AND FAMILY SERIVCES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

RELATES TO: KRS 211.842 - 211.852, 211.990(4), 10 C.F.R. 32.11, 32.18, 32.19, 32.51 - 32.74, 32.101 - 32.103, 32.110, 40.34, 40.35

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to regulate the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material.

Section 1. Registration of Product Information. (1) A manufacturer or initial distributor of a sealed source, or device containing a sealed source, whose product is intended for use under a specific license, shall submit a request to the cabinet for evaluation of radiation safety information about its product and for its registration.

(2) The request for review of a sealed source or device shall include sufficient information to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(3) The request shall include information on:

(a) Design;

(b) Manufacture;

(c) Prototype testing;

(d) Quality control program;

(e) Labeling;

(f) Proposed uses; and

(g) Leak testing.

(4) For a device, the request shall also include sufficient information about:

(a) Installation;

(b) Service and maintenance;

(c) Operating and safety instructions; and

(d) Potential hazards.

(5) The cabinet shall evaluate a sealed source or device using radiation safety criteria in accepted industry standards. If the standards and criteria do not readily apply to a particular case, the cabinet shall formulate reasonable standards and criteria, with the help of the manufacturer or distributor. The cabinet shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property.

(6) After completion of the evaluation, the cabinet shall issue a certificate of registration to the person making the request. The certificate shall acknowledge the availability of the submitted information for inclusion in an application for a specific license proposing use of the product.

(7) A person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

(a) The statements and representations, including quality control program, contained in the request; and

(b) The provisions of the registration certificate.

Section 2. Licensing the Introduction of Radioactive Material into Products in Exempt Concentrations. (1) In addition to the requirements established in 902 KAR Chapter 100 a specific license authorizing the introduction of radioactive material into a

product or material owned by or in the possession of the licensee or another, to be transferred to a person exempt under 902 KAR 100:045, Section 2(1)(a) shall be issued if:

(a) The applicant submits a description of the:

1. Product or material into which the radioactive material will be introduced;

2. Intended use of the radioactive material and the product or material into which it is introduced;

3. Method of introduction;

4. Initial concentration of the radioactive material in the product or material;

5. Control methods to assure that no more than the specified concentration shall be introduced into the product or material;

6. Estimated time interval between introduction and transfer of the product or material; and

7. Estimated concentrations of the radioactive material in the product or material at the time of transfer; and

(b) The applicant provides reasonable assurance that the:

1. Concentrations of the radioactive material at the time of transfer shall not exceed the concentrations established in 902 KAR 100:085;

2. Reconcentration of the radioactive material in concentrations exceeding those in 902 KAR 100:085 is not likely;

3. Use of lower concentrations is not feasible; and

4. Product or material is not likely to be incorporated in a food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) A person licensed pursuant to this administrative regulation shall:

(a) Maintain records of transfer of radioactive material;

(b) File an annual report with the cabinet that shall include the:

1. Type and quantity of a product or material into which radioactive material has been introduced during the reporting period;

2. Name and address of the person who owned or possessed the product or material into which radioactive material has been introduced at the time of introduction;

3. Type and quantity of radionuclide introduced into a product or material; and

4. Initial concentrations of the radionuclide in the product or material at the time
of transfer of the radioactive material by the licensee;

(c) Indicate in the report if no transfers of radioactive material have been made during the reporting period;

(d) File a report by July 30 covering the year ending the previous June 30; and

(e) Maintain the record of a transfer for a period of one (1) year after the event is included in a report to the cabinet.

Section 3. Resins Containing Scandium-46 and Designed for Sand-Consolidation in Oil Wells: Requirements for License to Manufacture or Initially Transfer for Sale or Distribution. An application for a specific license to manufacture or initially transfer for sale or distribution, synthetic plastic resins containing scandium-46 for use as indicated in 902 KAR 100:045, Section 3(3), shall be approved if:

(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4;

(2) The product is designed to be used only for sand-consolidation in oil wells;

(3) The applicant submits the following information:

(a) A general description of the product to be manufactured or initially transferred; and

(b) A description of control procedures used to assure that the concentration of scandium-46 in the final product at the time of distribution shall not exceed $1.4x10^{-3}$ micro-curie/milliliter; and

(4) A container of the product bears a durable, legible label approved by the cabinet based on the following information:

(a) The product name;

(b) A statement that the product contains radioactive scandium and is designed and manufactured only for sand-consolidation in oil wells;

(c) Instructions necessary for proper use; and

(d) The manufacturer's name.

Section 4. Licensing the Manufacture and Distribution of a Device to a Person Generally Licensed under 902 KAR 100:050. (1) In addition to the requirements established in 902 KAR Chapter 100 an application for a specific license to distribute certain devices containing radioactive material, excluding special nuclear material, to a person generally licensed shall be issued only if the applicant submits sufficient information relating to the:

(a) Design;

(b) Manufacture;

(c) Prototype testing;

(d) Quality control;

(e) Labels;

(f) Proposed uses;

(g) Installation;

(h) Servicing;

(i) Leak testing;

(j) Operating and safety instructions; and

(k) Potential hazards of the device to provide reasonable assurance that:

1. Under accident conditions, such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

a. Whole body, head and trunk, active blood-forming organs, gonads, or lens of eye - 15 rems (150 mSv);

b. Hands and forearms, feet and ankles, or localized areas of skin averaged over areas no larger than one (1) square centimeter - 200 rems (2 Sv); or

c. Other organs - 50 rems (500 mSv).

2. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device shall not be released or inadvertently removed from the device, and it is unlikely that a person will receive in a period of one (1) calendar year a dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

3. The device can be safely operated by individuals not having training in radiological protection.

(2) A device identified in subsection (1) of this section shall bear a durable, legible, clearly visible label or labels, in accordance with 902 KAR 100:050, which contain in a clearly identified and separate statement:

(a) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(b) The requirement, or lack of requirement, for leak testing or for testing an "on-off" mechanism and indicator, including the maximum time interval for the testing and the identification of radioactive material by:

1. Isotope;

2. Quantity of radioactivity; and

3. Date of determination of the quantity; and

(c) The information called for in the following statement, in the same or substantially similar form:

"The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

Name of manufacturer or distributor

The model, serial number, and name of the manufacturer or distributor may be omitted from this label if the information is elsewhere specified in labeling affixed to the device.

(3)(a) If the applicant desires that the device identified in subsection (1) of this section be required to be tested for proper operation of the "on-off" mechanism and indicator or for leakage of radioactive material, subsequent to the initial tests required by this administrative regulation at intervals longer than six (6) months but not exceeding three (3) years, the applicant shall include in the

application sufficient information to demonstrate that the longer interval is justified by:

1. Performance characteristics of the device or similar devices; and

2. Design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator.

(b) In determining the acceptable interval for the test for leakage of radioactive material, the cabinet may consider information that shall include:

1. Primary containment or source capsule;

2. Protection of primary containment;

3. Method of sealing containment;

4. Containment construction materials;

5. Form of contained radioactive material;

6. Maximum temperature withstood during prototype tests;

7. Maximum pressure withstood during prototype tests;

8. Maximum quantity of contained radioactive material;

9. Radiotoxicity of contained radioactive material; and

10. Operating experience with identical devices or similarly designed and constructed devices.

(4)(a) If the applicant desires authorization of the general licensee established in 902 KAR 100:050, Section 3, or pursuant to equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State, to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application:

1. Written instructions to be followed by the general licensee;

2. Estimated calendar quarter doses associated with the activity or activities; and

3. Basis for the estimates.

(b) The information shall demonstrate that performance of the activity by an individual untrained in radiological protection, handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten (10) percent of the annual limits specified in 902 KAR 100:019, Section 3.

(5) A person licensed pursuant to this administrative regulation to distribute devices to generally licensed persons shall:

(a) Furnish a copy of the general license identified in 902 KAR 100:050, Section 3, to each person to whom the licensee, directly or through an intermediate person, transfers radioactive material in a device for use as authorized by a general license;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, Section 3, or alternatively, furnish a copy of the general license to each person to whom the licensee directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or the Agreement State. If a copy of the general license identified in 902 KAR 100:050, Section 3, is furnished to the person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in 902 KAR 100:050, Section 3;

(c) Report to the cabinet transfers of the devices to persons for use under the general license.

1. The report shall identify:

a. A general licensee by name and address;

b. An individual by name or position who may constitute a point of contact between the cabinet and the general licensee;

c. The type and model number of device transferred; and

d. The quantity and type of radioactive material contained in the device.

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user.

3. If no transfers have been made to persons generally licensed during the reporting period, the report shall so indicate.

4. The report shall cover a calendar quarter and shall be filed within thirty (30) days of the close of the quarter.

(d) Furnish reports to other agencies as follows:

1. Report to the U.S. Nuclear Regulatory Commission transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 C.F.R. Part 31; or

2. Report to the responsible state agency transfers of devices manufactured and distributed for use under a general license in that state's regulations equivalent to 902 KAR 100:050, Section 3; and

3. The reports shall identify:

a. A general licensee by name and address;

b. An individual by name or position who may constitute a point of contact between the agency and the general licensee;

c. The type and model of the device transferred; and

d. The quantity and type of radioactive material contained in the device.

4. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user;

5. The report shall be submitted within thirty (30) days after the end of the calendar quarter in which the device is transferred to the generally licensed person;

6. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission; and

7. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency;

(e) Keep records showing the name, address, and the point of contact for a general licensee to which the licensee, directly or through an intermediate person, transfers radioactive material in devices for use as authorized by a general license or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall show:

1. The date of transfer;

2. The radionuclide and the quantity of radioactivity in each device transferred;

3. The identity of the intermediate person; and

4. Compliance with the report requirements; and

(f) Maintain the records required by paragraphs (c) and (d) of this subsection for a period of five (5) years from the date of the recorded transfer.

Section 5. Special Requirements for the Manufacture, Assembly, or Repair of Luminous Safety Devices for use in Aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:

(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4; and

(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.53, 32.54, 32.55, 32.56, 32.101, and 32.110 or their equivalent.

Section 6. Special Requirements for License to Manufacture and Distribute Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed pursuant to 902 KAR 100:050. An application for a specific license to manufacture or distribute calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and

(2) The applicant satisfies the requirements of U.S. Nuclear

Regulatory Commission 10 C.F.R. Part 32, Sections 32.57, 32.58, 32.59, and 32.102, and 10 C.F.R. Part 70, Section 70.39, or their equivalent.

Section 7. Licensing the Manufacture and Distribution of Ice Detection Devices Containing Strontium-90. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and

(2) The criteria of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.61, 32.62, 32.103, and 32.110 are met.

Section 8. Manufacture and Distribution of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing under a General License. An application for a specific license to manufacture or distribute radioactive material for use pursuant to the general license established in 902 KAR 100:050, Section 4, shall be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;

(2) The radioactive material is to be prepared for distribution in prepackaged units of:

(a) Iodine-125 in units not exceeding ten (10) microcuries (370 kBq) each;

(b) Iodine-131 in units not exceeding ten (10) microcuries (370 kBq) each;

(c) Carbon-14 in units not exceeding ten (10) microcuries (370 kBq) each;

(d) Hydrogen-3 (tritium) in units not exceeding fifty (50) microcuries (1.85 MBq) each;

(e) Iron-59 in units not exceeding twenty (20) microcuries (704 kBq) each;

(f) Selenium-75 in units not exceeding ten (10) microcuries (370 kBq) each;

(g) Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 MBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; or

(h) Cobalt-57 in units not exceeding fifty (50) microcuries (370 kBq) each;

(3) Each prepackaged unit bears a durable, clearly visible label:

(a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed:

1. Ten (10) microcuries (370 kBq) of iodine-131, iodine-125, selenium-75, cobalt-57, or carbon-14;

2. Fifty (50) microcuries (1.85 MBq) of hydrogen-3 (tritium);

3. Twenty (20) microcuries (740 kBq) of iron-59; or

4. Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; and

(b) Displaying the radiation caution symbol described in 902 KAR 100:019, Section 23, and the words, "Caution, Radioactive Material" and "Not for Internal or External Use in Humans or Animals";

(4) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to a prepackaged unit, or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Commission or of an Agreement State.
(Name of Manufacturer)"; and

(5) The label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information regarding precautions to be observed in handling and storing the radioactive material. For a mock iodine-125 reference or calibration source, the information accompanying the source shall contain directions to the licensee regarding the waste disposal requirements established in 902 KAR 100:021, Section 1.

Section 9. Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use Under Specific Licenses. (1) An application for a specific license to manufacture, prepare or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to 902 KAR 100:072, shall be approved if the applicant:

(a) Satisfies the requirements specified in 902 KAR 100:040, Section 4;

(b) Submits evidence that the applicant is at least one (1) of the following:

1. Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

2. Registered or licensed with a state agency as a drug manufacturer;

3. Licensed as a pharmacy by the State Board of Pharmacy; or

4. Operating as a nuclear pharmacy within the federal medical institution.

(c) Submits information on:

1. The radionuclide;

2. Chemical and physical form;

3. Maximum activity per vial, syringe, generator, or other container of the radioactive drug; and

4. Shielding provided by the packaging of the radioactive material to show it is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) Satisfies the following labeling requirements:

1. The label shall be affixed to the transport radiation shield, if it is constructed of lead, glass, plastic, or other material of a radioactive drug to be transferred for commercial distribution. The label shall include:

a. The radiation symbol;

b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";

c. The name of the radioactive drug or its abbreviation; and

d. The quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

2. A label shall be affixed to a syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include:

a. The radiation symbol;

b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and

c. An identifier that ensures the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by subsection (1)(b)3 <u>or 4</u> of this section may:

(a) Prepare radioactive drugs for medical use, as defined in 902 KAR 100:010, if the radioactive drug is prepared by an authorized nuclear pharmacist, as specified in paragraphs (b) and (c) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist, as specified in 902 KAR 100:072, Section 12;

(b) Allow a pharmacist to work as an authorized nuclear pharmacist if the individual:

1. Qualifies as an authorized nuclear pharmacist as defined in 902 KAR 100:010;

2. Meets the requirements specified in 902 KAR 100:072, Sections 63 and 66, and the licensee has received an approved license amendment identifying the individual as an authorized nuclear pharmacist; or

3. Is designated as an authorized nuclear pharmacist in accordance with paragraph (c) of this subsection.

(c) Designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as an authorized user on a

nuclear pharmacy license issued by the cabinet.

(3) The actions authorized in subsections (2)(a) and (b) of this section are permitted in spite of more restrictive language in license conditions.

(4) A licensee shall provide to the cabinet a copy of an individual's certification by the Board of Pharmaceutical Specialties, the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state license, and a copy of the state pharmacy licensure or registration, no later than thirty (30) days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist, pursuant to subsection (2)(b)1 and 3 of this section.

(5) A licensee shall:

(a) Possess and use instrumentation to measure the radioactivity of radioactive drugs;

(b) Have procedures for use of the instrumentation;

(c) Measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta- or photon-emitting radioactive drugs prior to transfer for commercial distribution;

(d) Perform accuracy, linearity, and geometry dependence tests on an instrument before initial use, periodically, and following repair, as appropriate for the instrument, and make necessary adjustments; and

(e) Check an instrument for constancy and proper operation at the beginning of each day of use.

(6) Nothing in this section relieves a licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

Section 10. Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as authorized by 902 KAR 100:072 for use as a calibration, transmission, or reference source or for medical uses listed in 902 KAR 100:072, Sections 37, 45 and 46 shall be approved if:

(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4;

(2) The applicant submits sufficient information regarding a type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form, and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint. The instructions shall be included on a durable label attached to the source or device, or attached to a permanent storage container for the source or device. Instructions too lengthy for a label may be summarized on the label and printed in detail on a brochure referenced on the label;

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains:

(a) Information on the radionuclide;

(b) Quantity; and

(c) Date of assay; and

(d) A statement that the name of source or device is licensed by the cabinet for distribution to persons licensed as authorized by 902 KAR 100:072, or under equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State;

(4) If an applicant desires the source or device to be tested for leakage of radioactive material at intervals longer than six (6) months, he shall include in the application sufficient information to demonstrate that the longer interval is justified by:

(a) Performance characteristics of the source or device, or similar sources or devices; and

(b) Design features having a significant bearing on the probability or consequence of leakage of radioactive material from the source; and

(5) In determining the acceptable interval for tests of leakage of radioactive material, the cabinet shall consider information that includes:

(a) Primary containment or source capsule;

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical sources or devices, or similarly designed and constructed sources or devices.

Section 11. Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-volume Applications. (1) An application for a specific license to manufacture or distribute an industrial product or device containing depleted uranium for use authorized by 902 KAR 100:050, Section 2, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State shall be approved if:

(a) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;

(b) The applicant submits sufficient information relating to the:

1. Design;

2. Manufacture;

3. Prototype testing;

4. Quality control procedures;

5. Labeling or marking;

6. Proposed uses; and

7. Potential hazards of the industrial product or device;

(c) The applicant provides reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive in a period of one (1) year a radiation dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

(d) The applicant submits sufficient information regarding the industrial product or device, and the presence of depleted uranium for a mass-volume application in the product or device, to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) For an industrial product or device that is unique benefits are questionable, the cabinet may approve an application for a specific license pursuant to this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The cabinet shall deny an application for a specific license pursuant to this section if the end use of the industrial product or device cannot reasonably be foreseen.

(4) A person licensed as authorized by this section shall:

(a) Maintain the level of quality control required by the license in:

1. Manufacture of the industrial product or device; and

2. Installation of the depleted uranium into the product or device;

(b) Label or mark each unit to identify:

1. The manufacturer of the product or device;

2. The number of the license under which the product or device was manufactured or distributed;

3. The fact that the product or device contains depleted uranium;

4. The quantity of depleted uranium in the product or device; and

5. That the receipt, possession, use, or transfer of the product or device is subject to a general license, or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(c) Assure that the depleted uranium, before being installed in a product or device, has been impressed with the legend "DEPLETED URANIUM" clearly legible through plating or other covering;

(d) Furnish a copy of the general license contained in:

1. 902 KAR 100:050 to a person to whom depleted uranium is transferred in a product or device for use authorized by the general license; or

2. The U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, and a copy of an applicable U.S. Nuclear Regulatory Commission's or Agreement State's certificate, to a person to whom depleted uranium is transferred in a product or device for use as authorized by the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in 902 KAR 100:050;

(e) Furnish the following to either the cabinet, U.S. Nuclear Regulatory Commission, or agreement state:

1. A report of each transfer of an industrial product or device to a person for use pursuant to the general license in 902 KAR 100:050. The report shall identify:

a. A general licensee by name and address;

b. An individual, by name or position, who constitutes a point of contact between the cabinet and the general licensee;

c. The type and model number of device transferred; and

d. The quantity of depleted uranium contained in the product or device.

2. The report identified in subparagraph 1 of this paragraph shall be submitted within thirty (30) days after the end of a calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed pursuant to 902 KAR 100:050 during the reporting period, the report shall so indicate; and

(f) Keep records showing the name, address, and point of contact for a general licensee to whom he transfers depleted uranium in an industrial product or device for use authorized by the general license provided in 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of three (3) years from the date of transfer and shall show the date of each transfer, the quantity of depleted uranium in a product or device transferred, and compliance with the report requirements of this section.

Section 12. Licensing the Distribution of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) in Exempt Quantities. (1) An application for a specific license to distribute NARM to persons exempted from these regulations authorized by 902 KAR 100:045 shall be approved if:

(a) The radioactive material is not contained in a food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(c) The applicant submits copies of prototype labels and brochures in accordance with 10 C.F.R. 32.18 and 32.19 and the cabinet approves the labels and brochures.

(2) The license issued pursuant to this section is subject to the following conditions:

(a) No more than ten (10) exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantity, if the sum of the fractions does not exceed unity.

(b) An exempt quantity shall be packaged separately and individually. No more than ten (10) packaged exempt quantities shall be contained in an outer package for transfer to persons exempt as authorized by 902 KAR 100:045. The dose rate at the external surface of the outer package shall not exceed five-tenths (0.5) millirem per hour.

(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

1. Identifies the radionuclide and the quantity of radioactivity; and

2. Bears the words "Radioactive Material."

(d) In addition to the labeling information required by this subsection, the label affixed to the immediate container, or an accompanying brochure, shall:

1. State that the contents are exempt from licensing agency requirements;

2. Bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined"; and

3. Establish appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(3)(a) A person licensed pursuant to this section shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use in accordance with 902 KAR 100:045 or the equivalent regulations of a licensing agency, and stating the kinds and quantities of radioactive material transferred.

(b) An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the cabinet.

(c) A report shall cover the year ending June 30 and shall be filed within thirty (30) days after June 30. If no transfers of radioactive material have been made, as authorized by this section, during the reporting period, the report shall so indicate.

Section 13. Licensing the Incorporation of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) into Gas and Aerosol Detectors. (1) An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt pursuant to 902 KAR 100:045 shall be approved if the application satisfies requirements equivalent to those contained in U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32.26.

(2) The maximum quantity of radium-226 in a device shall not exceed one-tenth (0.1) microcurie (3.7 kBq).

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes requirements related to the manufacture, assembly, repair, or distribution of products containing radioactive material.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:058 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update sections of other regulations by reference with the correct reference.

(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 adds an omitted reference.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. This specific amendment is to bring the regulation into compliance with existing state regulations by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(2) authorizes the Cabinet for Health and Family Services to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. This amendment updates the regulations that govern those licenses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment corrects the references to an existing regulation, thus making administration of the regulation accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are ten (10) nuclear pharmacies and two (2) distributors of industrial gauges licensed by the Kentucky Radiation Health Branch who actively conduct business in Kentucky and are impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by the regulated entities. The regulation is correcting a reference to a known requirement.

(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 required by the regulated entities. The regulation is correcting a reference to a known requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have a correct regulation to which to refer.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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? No state or local entities will be impacted by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended their regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:058 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 is no revenue impact on state or local agencies as a result of this regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not impact expenditures or revenues of state or local agencies

(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 impact expenditures or revenues of state or local agencies

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended and 10 C.F.R. 32.11, 32.18, 32.19, 32.51-32.74, 32.101-32.103, 32.110, 40.34, 40.35.

2. State compliance standards. This standard provides requirements for licensees who manufacture, assemble, repair or distribute products.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose identical requirements and responsibilities as required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:070. Transportation of radioactive material.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 71, 39 C.F.R. 111.1, 49 C.F.R. 170-189

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for transportation of radioactive material.

Section 1. Applicability. (1) Applies to a licensee authorized by a specific or general license issued by the cabinet to receive, possess, use, or transfer radioactive material, when:

(a) The licensee delivers that material to a carrier for transport;

(b) Transports the material outside the site of usage as specified in the cabinet license; or

(c) Transports the material on public highways.

(2) No provision of this administrative regulation authorizes the possession of radioactive material.

Section 2. Requirement for a License. A person shall not deliver radioactive material to a carrier for transport, or transport radioactive material, unless:

(1) Authorized in a general or specific license issued by the cabinet; or

(2) Exempted pursuant to Section 3 of this administrative regulation.

Section 3. Exemptions. (1) A licensee is exempt from all the requirements of this administrative regulation with respect to shipment or carriage of the following low-level materials:

(a) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed ten (10) times the values specified in 10 C.F.R. 71, Appendix A; and

(b) Materials for which the activity concentration is not greater than the activity concentration values, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 C.F.R. 71, Appendix A.

(2)[~~A licensee shall be exempt from requirements in this administrative regulation, except for Sections 4 and 12 of this administrative regulation, with respect to shipment or carriage of the following packages, provided the packages do not contain fissile material, or the material is exempt from classification as fissile material under Section 14;~~

~~(a) A package that contains no more than a Type A quantity of radioactive material;~~

~~(b) A package transported within the United States that contains no more than twenty (20) Curies (0.74 TBq) of special form plutonium-244; or~~

~~(c) The package contains only LSA or SCO radioactive material, provided:~~

~~1. The LSA or SCO material has an external radiation dose of less than or equal to one (1) rem/hour (10 mSv/hour), at a distance of three (3) meters from the unshielded material; or~~

~~2. The package contains only LSA-1 or SCO-1 material.~~

~~(3)~~] A physician licensed by the Commonwealth to dispense drugs in the practice of medicine shall be exempt from Section 4 of this administrative regulation with respect to transport by the physician of radioactive material for use in the practice of medicine. However, a physician operating under this exemption shall be licensed pursuant to 902 KAR 100:072 or equivalent regulations of the NRC or an agreement state.

Section 4. Transportation of Licensed Material. (1) Each[~~A~~] licensee who transports licensed material outside of the confines of his plant or other place of use specified in the cabinet license, or if transport is[~~who transports~~] on a public highway, or who delivers licensed material to a carrier for transport, shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 C.F.R. 107, 171 through 180[~~189~~], and 390 through 397; and

(b) Assure that special instructions needed to open the package safely are sent to, or have been made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

(2) If the regulations of the U.S. Department of Transportation (DOT) are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the Department of Transportation regulations, specified in subsection (1)(a) of this section, to the same extent as if the shipment was subject to the DOT regulations.

Section 5. General Licenses for Carriers. (1) A general license shall be issued to a common or contract carrier, not exempt under Section 3 of this administrative regulation, to receive, possess, transport, and store radioactive material in the regular course of carriage for another, or storage incident to the transportation and storage, if the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(2) A general license shall be issued to a private carrier to transport radioactive material, if the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(3) The notification of incidents referred to in the U.S. Department of Transportation requirements identified in subsection (1) of this section shall be filed with, or made to, the cabinet.

(4) A person authorized by a general license described in this section, who transports radioactive material, is exempt from the requirements of 902 KAR 100:019 and 902 KAR 100:165.

Section 6. General License: NRC Approved Packages. (1) A general license shall be issued to a licensee of the cabinet to transport or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the NRC as satisfying the provisions of 10 C.F.R. 71.101 through 137;

(b) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(c) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137; and

(d) Submits in writing to Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, using an appropriate method listed in 10 C.F.R. 71.1(a), before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(3) The general license identified in subsection (1) of this section shall apply only if the package approval authorizes use of the package under the general license.

(4) For a Type B or fissile material package, the design of which was approved by the NRC before April 1, 1996, the general license shall be subject to additional restrictions contained in Section 7 of this administrative regulation.

Section 7. Previously Approved Type B Packages. (1) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following limitations:

(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by its model number, in accordance with NRC regulations;

(b) The package shall not be used for a shipment to a location outside the United States after August 31, 1986, except under multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and

(2) A serial number that uniquely identifies each package that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each package.

(3) A Type B(U) package, a Type B(M) package, an LSA material package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following conditions:

(a) Fabrication of the package shall have been satisfactorily completed by April 1, 1999, as demonstrated by its model number, in accordance with NRC regulations, 10 C.F.R.;

(b) A package used for shipment to a location outside the United States shall be subject to multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and

(c) A serial number that uniquely identifies each package that conforms to the approved design shall be assigned to, and legibly and durably marked on the outside of, each package.

Section 8. General License: DOT Specification Container. (1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material, or for a Type B quantity of radioactive material, as specified in 49 C.F.R. Parts 173 and 178.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the cabinet as satisfying the requirements of 10 C.F.R. 71.101 through 71.137;

(b) Has a copy of the specification; and

(c) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(3) The general license shall be subject to the limitation that the specification container shall not be used for a shipment to a location outside the United States except by multilateral approval, as defined in 49 C.F.R. 173.403.

(4) This section expires October 1, 2008.

Section 9. General License: Use of Foreign Approved Package. (1)(a) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate and revalidated by the U.S. Department of Transportation as meeting the applicable requirements of 49 C.F.R. 171.12.

(b) Except as provided in this section, the general license shall apply only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of 10 C.F.R. 71.101 through 71.137.

(2) The general license shall apply only to shipments made to or from locations outside the United States.

(3) The general license shall apply to a licensee who:

(a) Has copies of the applicable certificate, the revalidation, the drawings, and other documents referenced in the certificate relating to the:

1. Use and maintenance of the packaging; and

2. Actions to be taken prior to shipment; and

(b) Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(4) With respect to the quality assurance provisions of 10 C.F.R. 71.101 through 71.137, the licensee shall be exempt from design, construction, and fabrication considerations.

Section 10. Preliminary Determinations. Before the first use of a packaging for the shipment of radioactive material:

(1) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that may significantly reduce the effectiveness of the packaging;

(2) If the maximum normal operating pressure will exceed thirty-five (35) kilopascal (five (5) lbf/in^2) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure; and

(3) The licensee shall mark the packaging, conspicuously and durably, with its model number, serial number, gross weight, and a package identification number assigned by the NRC, in accordance with 10 C.F.R. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

Section 11. Routine Determinations. Before making a shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:

(1) The package is proper for the contents to be shipped;

(2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;

(3) Each closure device of the packaging, including any

required gasket, is properly installed and secured and free of defects;

(4) A system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) A pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(8) A structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by 10 C.F.R. 71.45.

(9) The level of nonfixed, or removable, radioactive contamination on the external surfaces of each package offered for shipment is ALARA, and within the limits specified by the U.S. Department of Transportation in 49 C.F.R. 173.443;

(10) External radiation levels around the package and around the vehicle, if applicable, shall not exceed the limits specified in 49 C.F.R. 71.47 during transportation.

(11) Accessible package surface temperatures shall not exceed the limits specified in 10 C.F.R. 71.43(g) at any time during transportation.

Section 12. Air Transport of Plutonium. In addition to the requirements of a general license and exemptions stated in this administrative regulation or included by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application;

(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 C.F.R. 71, Appendix A and in which the radioactivity is essentially uniformly distributed;

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in an isotope or form and is shipped in accordance with Section 4 of this administrative regulation;

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC; or

(5) For a shipment of plutonium by air which is subject to subsection (4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 C.F.R. 175.704, applicable to the air transport of plutonium;

(6) Nothing in this section shall be interpreted as removing or diminishing the requirements of 10 C.F.R. 73.24.

Section 13. Advance Notification of Transport of Irradiated Reactor Fuel and Nuclear Waste. (1)(a) Before the transport of nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or before the delivery of nuclear waste to a carrier for transport, a licensee shall provide advance notification of the transport to the governor, or governor's designee, of each state through which the waste will be transported.

(b) Advance notification shall be required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements in 10 C.F.R. 73.37(f).

(2) Advance notification shall also be required for licensed material, other than irradiated fuel, if:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported to, through, or across a state boundary to a disposal site, or to a collection point for transport to a disposal site; and

(c) The quantity of licensed material in a single package exceeds the least of the following:

1. 3,000 times the A_1 value of the radionuclides as specified in 10 C.F.R. 71, Appendix A for special form radioactive material;

2. 3,000 times the A_2 value of the radionuclides as specified in 10 C.F.R. 71 Appendix A for normal form radioactive material; or

3. 27,000 curies (1000 TBq).

(3) Each advance notification shall be in writing and contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by 49 C.F.R. 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;

(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet.

(a) A notification delivered by mail shall be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur.

(b) A notification delivered by messenger shall reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three (3) years.

(5) The licensee who finds that schedule information previously furnished will not
be met, shall telephone a responsible individual in the office of the governor, or governor's designee and the cabinet and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain for three (3) years a record of the name of the individual contacted.

(6) A licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. The licensee shall state in the notice that it is a cancellation and shall identify the advance notification that is being cancelled. A copy of the notice shall be retained by the licensee for three (3) years.

Section 14. Exemption from Classification as Fissile Material. Fissile material meeting the requirements of at least one (1) of the subsections (1) through (6) of this section are exempt from classification as fissile material and from the fissile material package standards of 10 C.F.R. 71.55 and 71.59, but are subject to all other requirements of this administrative regulation, except as noted. (1) Individual package containing two (2) grams or less fissile material;

(2) Individual or bulk packaging containing fifteen (15) grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material;

(3)(a) Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:

1. There is at least 2,000 grams of solid nonfissile material for every gram of fissile material; and

2. There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(b) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium enriched in uranium-235 to a maximum of one (1) percent by weight, and with total plutonium and uranium content of up to one (1) percent of the mass of uranium-235, provided that the

mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five (5) percent of the uranium mass;

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two (2) percent by mass, with a total plutonium and uranium-233 content not exceeding two one-thousands (0.002) percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two (2). The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1,000 grams, of which not more than twenty (20) percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Section 15. General License: Fissile Material (1) A general license is issued to any licensee of the cabinet to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section of this administration regulation. The fissile material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71.101 through 71.137.

(3) The general license shall apply only when a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(4) The general license shall apply only to packages containing fissile material that are labeled with a Criticality Safety Index (CSI) that:

(a) Has been determined in accordance with subsection (5) of this section;

(b) Has a value less than or equal to ten (10); and

(c) For a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance, and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10\left(\frac{\text{grams of U-235}}{X} + \frac{\text{grams of U-233}}{Y} + \frac{\text{grams of Pu}}{Z}\right)$$

(b) The calculated CSI shall be rounded up to the first decimal place;

(c) The values of X, Y, and Z used in the CSI equation shall be taken from 10 C.F.R. Tables 71 – 1 or 71 – 2[~~71 Appendix A, Table A-1 or A.2~~], as appropriate;

(d) If 10 C.F.R. Table 71 - 2[~~Table A-2~~] is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium shall be assumed to be zero (0); and

(e) 10 C.F.R. Table 71 – 1[~~Table A-1~~] values for X, Y, and Z shall be used to determine the CSI if:

1. Uranium-233 is present in the package;

2. The mass of plutonium exceeds one (1) percent of the mass of uranium-235;

3. The uranium is of unknown uranium-235 enrichment or greater than twenty-four (24) percent enrichment; or

4. Substances having a moderating effectiveness (an average hydrogen density greater than water), such as, certain hydrocarbons oils or plastics, are present in any form, except as polyethylene used for packaging or wrapping.

Section 16. General License: Plutonium-beryllium Special Form Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. This material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71 Subpart H.

(3) The general licensee applies only if a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 1,000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.

(4) The general license applies only to packages labeled with a CSI that:

(a) Have been determined in accordance with subsection (5) of this section;

(b) Have a value less than or equal to 100; and

(c) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \text{ an}\left(\frac{\text{Grams of Pu-239 + grams of Pu-241}}{24}\right)$$

(b) The calculated CSI shall be rounded up to the first decimal place.

Section 17. External Radiation Standards for all Packages. (1) Except as provided in subsection (2) of this section, a package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level shall not exceed 200 millirem/hour (mrem/h) (2 milliservierts/h) (2 mSv/h) at any point on the external surface of the package, and the transport index shall not exceed ten (10).

(2) A package that exceeds the radiation level limits specified in subsection (1) of this section shall be transported by exclusive use shipment only, and the radiation levels for the shipment shall not exceed the following during transportation:

(a) 200 mrem/h (2 mSv/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 1,000 mrem/h (10 mSv/h);

1. The shipment is made in a closed transport vehicle;

2. The package is secured within the vehicle so that its position remains fixed during transportation; and

3. There are no loading or unloading operations between the beginning and end of the transportation;

(b) 200 mrem/h (2 mSv/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(c)1. Ten (10) mrem/h (0.1 mSv/h) at any point eighty (80) inches (2 meters) from the outer lateral surface of the vehicle, excluding the top and underside of the vehicle; or

2. In the case of a flat-bed style vehicle, an any point six and six tenths (6.6) feet (2 meters) from the vertical planes projected by the outer edges of the vehicle, excluding the top and underside of vehicle; and

(d) Two (2) mrem/h (0.02 mSv/h) in any normally occupied space, except that this provision shall not apply to private carriers,

if exposed personnel under their control wear radiation dosimetry devices as required by 902 KAR 100:019, Section 13.

(3) For shipments made under the provisions of subsection (2) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(4) The written instructions required for exclusive use shipments shall be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposure to transport workers or members of the general public.

Section 18. Assumption as to Unknown Properties. If the isotopic abundance, mass, concentration, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

Section 19. Opening Instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

Section 20. Quality Assurance Requirements. (1) The requirements in Sections 20 through 28 shall apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging important to safety. As used in this administrative regulation, quality assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(2) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(3) The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.

(4) A licensee is responsible for the quality assurance provision that applies to its use of a packaging for the shipment of licensed material subject to this administrative regulation.

(5) A licensee, certificate holder, and applicant for a CoC shall:

(a)[~~1.~~] Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

(b)[~~2.~~] Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(6) A licensee shall, before the use of a package for the shipment of licensed material subject to this administrative regulation, obtain U.S. Nuclear Regulatory Commission approval of its quality assurance program. Using an appropriate method listed in 10 C.F.R. 71.1(a), a licensee shall file a description of its quality assurance program, including a discussion of which requirements of this administrative regulation are applicable and how they will be satisfied, by submitting the description to: Attention: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

(7) A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 902 KAR 100:100, Section 9(3) is deemed to satisfy the requirements of Section 6(2)(a) and subsection (5) of this section.

Section 21. Quality Assurance Organization. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(2) The quality assurance functions are:

(a) Assuring an appropriate quality assurance program is established and effectively executed; and

(b) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(3) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:

(a) Identify quality problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of solutions.

(4) While the term "licensee" is used, the requirements in this section shall be applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.

Section 22. Quality Assurance Program. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of 10 C.F.R. 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following conditions concerning the complexity and proposed use of the package and its components:

(a) The impact of malfunction or failure of the item to safety;

(b) The design and fabrication complexity or uniqueness of the item;

(c) The need for special controls and surveillance over processes and equipment;

(d) The degree to which functional compliance can be demonstrated by inspection or test; and

(e) The quality history and degree of standardization of the item.

(4) The license, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary, to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC

shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

Section 23. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. If necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels shall be specified and provided.

Section 24. Inspection, Test and Operating Status. (1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by passing of the inspections and tests.

(2) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

Section 25. Nonconforming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

Section 26. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

Section 27. Quality Assurance Records. (1) The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records shall include the instructions, procedures, and drawings required by 10 C.F.R. 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) The records shall include the instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(3) The licensee, certificate holder, and applicant for a CoC shall retain these records for three (3) years beyond the date when the licensee, certificate holder, applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for CoC shall retain the superseded material for three (3) years after it is superseded.

Section 28. Audits. (1) The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.

(2) The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited.

(3) Audited records shall be documented and reviewed by management having responsibility in the area audited.

(4) Follow-up action, including reaudit of deficient areas, shall be taken as indicated.

Section 29. Determination of A_1 and A_2. [~~(1)~~] Values of A_1 and A_2 shall be determined as described in 10 C.F.R. 71 Appendix A.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502/564-7905, fax 502/564-7573, email tricia.orme@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes guidelines for the transportation of radioactive material.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:070 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KAR 194A.030, 194A:050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative radiation currently assists or will assist in the effective administration of the statutes: By updating

the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations thereby ensuring that Kentucky licensees are bound by the same requirements as their counterparts across the country.

(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 removes an exemption for low level materials, updates the equation used to derive the Criticality Safety Index, and corrects various references in order to maintain compatibility with federal regulations.

(b) The necessity of the amendment to this administrative regulation: This will ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to disposal of radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. That authority includes ensuring compliance with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will create conformance with federal regulations. This will ensure compliance is uniform between the two regulating bodies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 430 radioactive material licensees by making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

(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: Knowledge of its compliance with federal regulations is all that is required. Because radioactive material licensees must currently conform to federal regulations, this amendment will not require additional action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost associated with uniformity of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The 430 radioactive material licensees will have the benefit of uniformity of compliance between state and 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 will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost will be required to implement this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees directly or indirectly increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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 Energy and Environmental Cabinet, Transportation Cabinet, Cabinet for Health and Family Services, Louisville Metro Police Department, Lexington Police Department, and state colleges and universities will be impacted by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended their regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:070 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation related to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 local expenditure or revenue will be impacted by this 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? No revenue will be generated for state or local governments by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state or local governments by this regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost will be incurred to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, 10 C.F.R. 71, 39 C.F.R. 111.1, and 49 C.F.R. 170-189.

2. State compliance standards. This administrative regulation provides requirements for licensees who transport radioactive materials within the Commonwealth.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

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. There are no different, stricter or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Public Health Protection and Safety
(Amendment)

902 KAR 100:072. Use of radionuclides in the health arts.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 C.F.R. 35, 45 C.F.R. 46

STATUTORY AUTHORITY: KRS 194A.050, 211.090, 211.844, 10 C.F.R. 35

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements and provisions for the use of radioactive material in the healing arts, for issuance of licenses authorizing the medical use of radioactive material and for specific licensees to possess, use, and transfer radioactive material for medical uses.

Section 1. Implementation. (1) A licensee shall implement the provisions in this administrative regulation on or before October 24, 2005, with the exception of the requirements listed in subsection (2) of this section.

(2) A licensee shall implement the training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation on or before October 25, 2007.

(3) Prior to October 25, 2007, a licensee shall satisfy the training requirements of this administrative regulation for a radiation safety officer, an authorized medical physicist, an authorized nuclear pharmacist, or an authorized user by complying with either:

(a) The appropriate training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation; or

(b) The appropriate training requirements in Section 78 of this administrative regulation.

(4) If a license condition exempted a licensee from a provision of this administrative regulation on October 24, 2005, then the license condition continues to exempt the licensee from the provision of 902 KAR 100:072.

(5) If a requirement in this administrative regulation differs from the requirement in an existing license condition, the requirement in this administrative regulation shall govern.

(6) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Sections 49, 55, 56, and 57 of this administrative regulation until there is a license amendment or renewal that modifies the license condition.

Section 2. License Required. (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not required for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with the administrative regulations in this chapter under the supervision of an authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with the administrative regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition.

Section 3. Maintenance of Records. Each record required by this administrative regulation shall be legible throughout the retention period specified by each section. The record shall be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Section 4. Application for License, Amendment, or Renewal. (1) An application shall be signed by the applicant's or licensee's management.

(2) An application for a license for medical use of radioactive material as described in Sections 30, 31, 33, 37, 45, 46 and 62 of this administrative regulation and shall be made by:

(a) Filing an original and one (1) copy of Form RPS-7, Application for Radioactive Material License, that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized user, authorized medical physicist, and authorized nuclear pharmacist; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57, of this administrative regulation as applicable.

(3) A request for a license amendment or renewal shall be made by:

(a) Submitting an original and one (1) copy of either:

1. Form RPS-7, Application for Radioactive Material License; or

2. A letter requesting the amendment or renewal; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57 of this administrative regulation as applicable.

(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in Section 62 of this administrative regulation shall also include information regarding any radiation safety aspects of the medical use of the material that is unique to the evolving technology.

(a) The applicant shall also provide specific information on:

1. Radiation safety precautions and instructions;

2. Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

3. Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.

(b) The applicant or licensee shall provide information requested by the cabinet as necessary to complete its review of the application.

(5) An applicant that satisfies the requirements specified in 902 KAR 100:052 of this chapter may apply for a Type A specific license of broad scope.

Section 5. License Amendments. A licensee shall apply for and receive a license amendment:

(1) Before the licensee receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;

(2) Before the licensee permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:

(a) For an authorized user, an individual who meets the requirements in Sections 63, 68(1), 69(1), 70(1), 71(1), 72(1), 74(1), 76(1), 77(1), 78(2)(a), 78(3)(a), 78(4)(a), 78(7)(a), 78(9)(a), and 78(10)(a) of this administrative regulation;

(b) For an authorized nuclear pharmacist, an individual who meets the requirements in Sections 63 and 66(1) or 78(12)(a);

(c) For an authorized medical physicist, an individual who meets the requirements in Sections 63 and 65(1) or 78(11)(a) or (b) of this administrative regulation;

(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:

1. On a cabinet, an agreement state or U.S. Nuclear

Regulatory Commission license or other equivalent permit or license recognized by the cabinet that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;

2. On a permit issued by the cabinet, an agreement state or U.S. Nuclear Regulatory Commission specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;

3. On a permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

4. By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.

(3) Before it changes radiation safety officers, except as provided in Section 10(3) of this administrative regulation;

(4) Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

(5) Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either Section 30 or 31 of this administrative regulation;

(6) Before it changes the address of use identified in the application or on the license; or

(7) Before it revises procedures required by Sections 49, 55, 56 and 57 of this administrative regulation as applicable, where the revision reduces radiation safety; and

(8) Before conducting research involving human research subjects using radioactive material.

Section 6. Notifications. (1) A licensee shall provide the cabinet a copy of the board certification, the cabinet, U.S. Nuclear Regulatory Commission or agreement state license, the permit issued by a U.S. Nuclear Regulatory Commission master material licensee, the permit issued by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee of broad scope, or the permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee for each individual no later than thirty (30) days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist under Section 5(2)(a) through (d) of this administrative regulation.

(2) A licensee shall notify the cabinet by letter no later than thirty (30) days after:

(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in 902 KAR 100:040, Section 6(2) of this chapter; or

(d) The licensee has added to or changed the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation.

(3) The licensee shall mail the documents required in this section to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main
Street, Mailstop HS1C-A, Frankfort, Kentucky 40621.

Section 7. Exemptions Regarding Type A Specific Licenses of Broad Scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under 902 KAR 100:052 of this chapter, is exempt from:

(1) Section 4(4) of this administrative regulation regarding the need to file an amendment to the license for medical use of radioactive material, as described in Section 62 of this administrative regulation;

(2) The provisions of Section 5(2) of this administrative regulation;

(3) The provisions of Section 5(5) of this administrative regulation regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) The provisions of Section 6(1) of this administrative regulation;

(5) The provisions of Section 6(2)(a) of this administrative regulation for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;

(6) The provisions of Section 6(2)(d) of this administrative regulation regarding additions to or changes in the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation; and

(7) The provisions of Section 36(1) of this administrative regulation.

Section 8. License Issuance. (1) The cabinet shall issue a license for the medical use of radioactive material if:

(a) The applicant has filed RPS-7 Application for Radioactive Material License in accordance with the instructions in Section 4 of this administrative regulation;

(b) The applicant has paid any applicable fee as provided in 902 KAR 100:012 of this chapter;

(c) The cabinet finds the applicant equipped and committed to observe the safety standards established by the cabinet in this Chapter for the protection of the public health and safety; and

(d) The applicant meets the requirements of 902 KAR 100:040, 100:041, 100:042, and 100:045 of this chapter.

(2) The cabinet shall issue a license for mobile medical service if the applicant:

(a) Meets the requirements in subsection (1) of this section; and

(b) Assures that individuals or human research subjects to whom unsealed radioactive material or radiation from implants containing radioactive material will be administered may be released following treatment in accordance with Section 27 of this administrative regulation.

Section 9. Specific Exemptions. The cabinet may, as established in 10 C.F.R. 35.19, upon application of any interested person or upon its own initiative, grant exemptions from the administrative regulations in this chapter that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 10. Authority and Responsibilities for the Radiation Protection Program. (1) In addition to the radiation protection program requirements of 902 KAR 100:019 of this administrative regulation, a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the cabinet;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted in under Section 11 of this administrative regulation.

(2) A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

(3) For up to sixty (60) days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under Sections 63 and 64, of this administrative regulation to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, as provided in subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the cabinet in accordance with Section 6 of this administrative regulation.

(4) A licensee may simultaneously appoint more than one (1)

temporary radiation safety officer in accordance with subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the radiation safety officer in writing.

(6) A licensee authorized for two (2) or more different types of uses of radioactive material under Sections 33, 37, and 46 of this administrative regulation or two (2) or more types of units under Section 46 of this administrative regulation shall establish a Radiation Safety Committee to oversee all uses of radioactive material permitted by the license. The committee shall include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative to:

(a) Identify radiation safety problems;

(b) Initiate, recommend, or provide corrective actions;

(c) Stop unsafe operations; and

(d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section as follows:

(a) A licensee shall retain a record of actions taken by the licensee's management in accordance with subsection (1) of this section, for five (5) years. The record shall include a summary of the actions taken and a signature of licensee management.

(b) The licensee shall retain a copy of both authority, duties, and responsibilities of the radiation safety officer, as required in subsection (5) of this section, and a signed copy of each radiation safety officer's agreement to be responsible for implementing the radiation safety program, as required in subsection (5) of this section, for the duration of the license. The records shall include the signature of the radiation safety officer and licensee management.

Section 11. Radiation Protection Program Changes. (1) A licensee may revise its radiation protection program without cabinet approval if:

(a) The revision does not require a license amendment under Section 5 of this administrative regulation;

(b) The revision is in compliance with 902 KAR Chapter 100 and the license;

(c) The revision has been reviewed and approved by the radiation safety officer and licensee management; and

(d) The affected individuals are instructed on the revised program before the changes are implemented.

(2) A licensee shall retain a record of each radiation protection program change made in accordance with subsection (1) of this section for five (5) years. The record shall include a copy of the old and new procedures, the effective date of the change, and the signature of the licensee management that reviewed and approved the change.

Section 12. Supervision. (1) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Section 2(2)(a) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the use of radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Section 2(2)(b) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the administrative regulations of this chapter, and license conditions.

(3) A licensee that permits supervised activities under subsections (1) and (2) of this section is responsible for the acts and omissions of the supervised individual.

Section 13. Written Directives. (1) A written directive shall be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (Thirty (30) microcuries (µCi)), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material.

(a) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record.

(b) A written directive shall be prepared within forty-eight (48) hours of the oral directive.

(2) The written directive shall contain the patient or human research subject's name and the following information:

(a) For any administration of quantities greater than 1.11 MBq (30 µCi) of sodium iodide I-131: the dosage;

(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radioactive drug, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;

(e) For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; or

(f) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

1. Before implantation: treatment site, the radionuclide, and dose; and

2. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose).

(3) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(a) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented as soon as possible in the patient's record.

(b) A revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision.

(4) The licensee shall retain a copy of the written directive as required by this section for three (3) years.

Section 14. Procedures for Administrations Requiring a Written Directive. (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written

procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by subsection (1) of this section shall address the following items that are applicable to the licensee's use of radioactive material:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) Checking both manual and computer-generated dose calculations; and

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by Section 46 or 62 of this administrative regulation.

(3) A licensee shall retain a copy of the procedures required under subsection (1) for the duration of the license.

Section 15. Report and Notification of Medical Events. (1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:

(a) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin; and

1. The total dose delivered differs from the prescribed dose by twenty (20) percent or more;

2. The total dosage delivered differs from the prescribed dosage by twenty (20) percent or more or falls outside the prescribed dosage range; or

3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty (50) percent or more.

(b) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin from any of the following:

1. An administration of a wrong radioactive drug containing radioactive material;

2. An administration of a radioactive drug containing radioactive material by the wrong route of administration;

3. An administration of a dose or dosage to the wrong individual or human research subject;

4. An administration of a dose or dosage delivered by the wrong mode of treatment; or

5. A leaking sealed source.

(c) A dose to the skin or an organ or tissue other than the treatment site that exceeds by five-tenths (0.5) Sv (fifty (50) rem) to an organ or tissue and fifty (50) percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of the medical event. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of the medical event.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the individual who received the administration;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's name or any other information that could lead to identification of the individual.

(5) The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than twenty-four (24) hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee shall not be required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within twenty-four (24) hours, the licensee shall notify the individual as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this subsection, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested.

(6) Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the individual who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the individual who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 16. Report and Notification of a Dose to an Embryo/fetus or a Nursing Child. (1) A licensee shall report any dose to an embryo/fetus that is greater than fifty (50) mSv (five (5) rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:

(a) Is greater than fifty (50) mSv (five (5) rem) total effective dose equivalent; or

(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) of this section. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections

(1) or (2) in this section.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the embryo or fetus or the nursing child;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's or child's name or any other information that could lead to identification of the individual or child.

(5) The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than twenty-four (24) hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee shall not be required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within twenty-four (24) hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the embryo or fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested.

(6) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the pregnant individual or the nursing child who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 17. Provisions for the Protection of Human Research Subjects. (1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.

(2) If the research is conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and

(b) Obtain informed consent, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, from the human research subject.

(3) If the research will not be conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy, the licensee, shall before conducting research, apply for and receive a specific amendment to its cabinet medical use license. The amendment request shall include a written commitment that the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and

(b) Obtain "informed consent", as defined and described in the Federal Policy, form the human research subject.

(4) Nothing in this section relieves the licensees from complying with the other requirements in this administrative regulation.

Section 18. Report of a Leaking Source. A licensee shall file a report within five (5) days if a leak test required by Section 24, of this administrative regulation reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination. The report shall be filed with the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Frankfort, Kentucky 40621. The written report shall include the model number and serial number, if assigned, of the leaking source; the radionuclide and its estimated activity; the results of the test; the date of the test; and the action taken.

Section 19. Quality Control of Diagnostic Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for radionuclide studies. (1) As a minimum, the procedures shall include:

(a) Quality control procedures recommended by equipment manufacturers; or

(b) Procedures approved by the cabinet.

(2) The licensee shall conduct quality control procedures in accordance with written procedures.

Section 20. Possession, Use, and Calibration of Instruments Used to Measure the Activity of Unsealed Radioactive Material. (1) For direct measurements performed in accordance with Section 22, of this administrative regulation a licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.

(2) A licensee shall calibrate the instrumentation required in subsection (1) of this section in accordance with nationally-recognized standards or the manufacturer's instructions.

(3) A licensee shall maintain a record of instrument calibrations, required by this section, for three (3) years. The records shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 21. Calibration of Survey Instruments. (1) A licensee shall calibrate the survey instruments used to show compliance with this administrative regulation and 902 KAR 100:019 before first use, annually, and following a repair that affects the calibration. A licensee shall:

(a) Calibrate all scales with readings up to ten (10) mSv (1,000 mrem) per hour with a radiation source;

(b) Calibrate two (2) separated readings on each scale or decade that will be used to show compliance; and

(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) A licensee shall not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than twenty (20) percent.

(3) A licensee shall maintain a record of each radiation survey instrument calibrations for three (3) years. The record shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 22. Determination of Dosages of Unsealed Radioactive Material for Medical Use. (1) A licensee shall determine and record the activity of each dosage before medical use.

(2) For a unit dosage, this determination shall be made by:

(a) Direct measurement of radioactivity; or

(b) A decay correction, based on the activity or activity concentration determined by:

1. A manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

2. A cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA.[;]

(3) For other than unit dosages, this determination shall be made by:

(a) Direct measurement of radioactivity;

(b) Combination of measurement of radioactivity and mathematical calculations; or

(c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.[; or]

(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty (20) percent.

(5) A licensee shall retain a record of the dosage determination, required by this section, for three (3) years. The record shall contain:

(a) The radiopharmaceutical;

(b) The patient's or human research subject's name, or identification number if one (1) has been assigned;

(c) The prescribed dosage, the determined dosage, or a notation that the total activity is less than 1.11 MBq (30 µCi);

(d) The date and time of the dosage determination; and

(e) The name of the individual who determined the dosage.

Section 23. Authorization for Calibration, Transmission, and Reference Sources. Any person authorized by Section 2 of this administrative regulation for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use. (1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in 902 KAR 100:030.

(5) Technetium-99m in amounts as needed.

Section 24. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six (6) months or at other intervals approved by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state in the Sealed Source and Device Registry.

(3) To satisfy the leak test requirements of this section, the licensee shall measure the sample so that the leak test can detect the presence of 185 Bq (0.005 µCi) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with subsection (8)(a) of this section.

(5) If the leak test reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in 902 KAR 100:019, 100:021, 100:040, and 100:058; and

(b) File a report within five (5) days of the leak test in accordance with 902 KAR 100:072, Section 18.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 3.7 MBq (100 µCi) or less of beta or gamma-emitting material or 0.37 MBq (10 µCi) or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six (6) months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semiannual physical inventory of all these sources in its possession. The licensee shall retain each inventory record in accordance with subsection (8)(b) of this section.

(8) A licensee shall keep records of leaks tests and inventory of sealed sources and brachytherapy sources as follows:

(a) A licensee shall retain records of leak tests for three (3) years. The records shall include the model number and serial number, if one (1) has been assigned, of each source tested; the identity of each source by radionuclide and its estimated activity; the results of the test; the date of the test; and the name of the individual who performed the test.

(b) A licensee shall retain records of the semiannual physical inventory of sealed sources and brachytherapy sources for three (3) years. The inventory records shall contain the model number of each source, and serial number if one (1) has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source, and the name of the individual who performed the inventory.

Section 25. Labeling of Vials and Syringes. Each syringe and vial that contains unsealed radioactive material shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when shielded.

Section 26. Surveys of Ambient Radiation Exposure Rate. (1) In addition to the surveys required by 902 KAR 100:019, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee is not required to perform the surveys required by subsection (1) of this section in an area where patients or human research subjects are confined when they cannot be released under Section 27 of this administrative regulation.

(3) A licensee shall retain a record of each survey for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to conduct the survey, and the name of the individual who performed the survey.

Section 27. Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material. (1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to

the released individual is not likely to exceed five (5) mSv (five-tenths[~~fife-tenths~~] (0.5) rem). NUREG-1556, Vol. 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding five (5) mSv (0.5 rem).

(2) A licensee shall provide the released individual, or the individual's parent or
guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed one (1) mSv (one-tenth (0.1) rem). If the total effective dose equivalent to a nursing infant or child could exceed one (1) mSv (one-tenth (0.1) rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a)[~~1.~~] Guidance on the interruption or discontinuation of breast-feeding; and

(b)[~~2.~~] Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with this section, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered;

(b) Using an occupancy factor less than 0.25 at one (1) meter;

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(4) A licensee shall retain a record that the instructions, required by this section, were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding five (5) mSv (five-tenths (0.5) rem).

(5) The records required by subsections (3), and (4) of this section shall be retained for three (3) years after the date of release of the individual.

(6) A report shall be filed in accordance with Section 15 of this chapter and submitted to the cabinet if a dose greater than 50 mSv (5 rem) is received by an individual from a patient released under this section.

Section 28. Provision of Mobile Medical Service. (1) A licensee providing mobile medical service shall:

(a) Obtain a letter signed by the management of each client for which services are rendered that permits the use of byproduct material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;

(b) Check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this paragraph shall include a constancy check;

(c) Check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(d) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 902 KAR 100:019.

(2) A mobile medical service shall not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the byproduct material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile medical services shall retain the letter required in subsection (1)(a) and the record of each survey required in subsection (1)(d) of this section respectively:

(a) A licensee shall retain a copy of each letter required in subsection (1)(a) that permits the use of radioactive material at a client's address. Each letter shall clearly delineate the authority and responsibility of the licensee and the client and shall be retained for three (3) years after the last provision of service.

(b) A licensee shall retain the record of each survey required by subsection (1)(d) for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to make the survey, and the name of the individual who performed the survey.

(4) The cabinet shall license mobile medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 100:015, 100:019, 100:021, 100:040, 100:050, 100:060, 100:070, and 100:165.

Section 29. Decay-in-storage. (1) A licensee may hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal without regard to its radioactivity if the licensee:[~~;~~]

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(c) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(2) A licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

Section 30. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2), of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 and 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by:

(a) An authorized nuclear pharmacist;

(b) A physician who is an authorized user and who meets the requirements specified in Section 69 or 70 and Section 69(3)(a)2.g of this administrative regulation; or

(c) An individual under the supervision of either as specified in Section 12 of this administrative regulation; or

(3) Obtained from and prepared by a licensee of the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 31. Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2) of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by:

(a)[~~1.~~] An authorized nuclear pharmacist;

(b)[~~2.~~] A physician who is an authorized user and who meets the requirements specified in Sections 69 or 70 and Section 69(3)(a)2.g. of this administrative regulation; or

(c)[~~3.~~] An individual under the supervision, as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 32. Permissible Radionuclide Contaminant Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

(a) 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

(b) 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or

(c) 0.02 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride);

(2) A licensee preparing radiopharmaceuticals from radionuclide generators shall measure the concentration of radionuclide contaminant of the first eluate after receipt of a generator to demonstrate compliance with limits specified in subsection (1) of this section.

(3) A licensee required to measure radionuclide contaminant concentration, in this section, shall retain a record of each measurement for three (3) years;

(a) The record shall include, for each elution or extraction tested, the:

1. Measured activity of the radiopharmaceutical expressed in millicuries;

2. Measured activity of contaminant expressed in microcuries;

3. Ratio of the measurements in subsection (1)(a), (b), and (c) of this section expressed as microcuries of contaminant per millicurie of radiopharmaceutical;

4. Date of the test; and

5. Initials of the individual who performed the test.

(b) A licensee shall report immediately to the cabinet each occurrence of contaminant concentration exceeding the limits specified in this section.

Section 33. Use of Unsealed Radioactive Material for Which a Written Directive is Required. A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by an authorized nuclear pharmacist; a physician who is an authorized user and who meets the requirements specified in Section 69 or 70 of this administrative regulation, or an individual under the supervision, as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Section 34. Safety Instruction. (1) In addition to 902 KAR 100:165, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for the patient or the human research subjects receiving radiopharmaceutical therapy and hospitalized for compliance with Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

(a) Patient or human research subject control;

(b) Visitor control:

1. Routine visitation to hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the radiation safety officer, or his or her designee, and the authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving safety instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

Section 35. Safety Precautions. (1) For each patient or human research subject who cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Quarter the patient or the human research subject either in:

1. A private room with a private sanitary facility; or

2. A room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Section 27 of this administrative regulation;

(b) Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign:

(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room; and

(d) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste.

(2) A licensee shall notify the radiation safety officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 36. Suppliers for Sealed Sources or Devices for Medical Use. For medical use, a licensee shall only use:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state;

(2) Sealed sources or devices noncommercially transferred from a 902 KAR 100:072 license, U.S. Nuclear Regulatory Commission, or equivalent State Medical License; or

(3) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.

Section 37. Use of Sources for Manual Brachytherapy. A licensee shall use only brachytherapy sources for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or

(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA if the requirements of Section 36(1) of this administrative regulation are met.

Section 38. Surveys After Source Implant and Removal. (1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee

shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

(3) A licensee shall retain a record of the surveys required by subsections (1) and (2) of this section for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 39. Brachytherapy Sources Accountability. (1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

(3) A licensee shall maintain a record of the brachytherapy source accountability for three (3) years for:

(a) Temporary implants, the record shall include:

1. The number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage, and the location of use; and

2. The number and activity of sources returned to storage, the time and date they were returned to storage, and the name of the individual who returned them to storage.

(b) Permanent implants, the record shall include:

1. The number and activity of sources removed from storage, the date they were removed from storage, and the name of the individual who removed them from storage;

2. The number and activity of sources not implanted, the date they were returned to storage, and the name of the individual who returned them to storage; and

3. The number and activity of sources permanently implanted in the patient or human research subject.

Section 40. Safety Instruction. In addition to the requirements of 902 KAR 100:165 of this chapter. (1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall be commensurate with the duties of the personnel and shall include the:

(a) Size and appearance of the brachytherapy sources;

(b) Safe handling and shielding instructions;

(c) Patient or human research subject control;

(d) Visitor control, including both:

1. Routine visitation of hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter; and

(e) Notification of the radiation safety officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving instruction for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.

Section 41. Safety Precautions. (1) For each patient or human research subject who is receiving brachytherapy and cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;

(b) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and

(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Dislodged from the patient; and

(b) Lodged within the patient following removal of the source applicators.

(3) A licensee shall notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 42. Calibration Measurements of Brachytherapy Sources. (1) Before the first medical use of a brachytherapy source on or after October 24, 2005, a licensee shall have:

(a) Determined the source output or activity using a dosimetry system that meets the requirements of Section 51(1) of this administrative regulation;

(b) Determined source positioning accuracy within applicators; and

(c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsection (1)(a) and (b) of this section.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(4) A licensee shall retain a record of each calibration of brachytherapy sources required by this section for three (3) years after the last use of the source. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;

(c) The source output or activity;

(d) The source positioning accuracy within the applicators; and

(e) The name of the individual, source manufacturer, or the calibration laboratory that performed the calibration.

Section 43. Decay of strontium-90 sources for ophthalmic treatments. (1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under Section 42 of this administrative regulation.

(2) A licensee shall retain a record of the activity of each strontium-90 source for the life of the source. The record shall include:

(a) The date and initial activity of the source as determined under Section 42 of this administrative regulation; and

(b) For each decay calculation, the date and the source activity as determined under subsection (1) of this section.

Section 44. Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally-recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

(1) The source-specific input parameters required by the dose calculation algorithm;

(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) The accuracy of isodose plots and graphic displays; and

(4) The accuracy of the software used to determine sealed source positions from radiographic images.

Section 45. Use of Sealed Sources for Diagnosis. A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

Section 46. Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit. A licensee shall use sealed sources in photon emitting remote

afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or

(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of Section 36(1) of this administrative regulation are met.

Section 47. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit. (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of the surveys for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 48. Installation, Maintenance, Adjustment, and Repair. (1) Only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed source contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three (3) years. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and name of the individual who performed the work.

Section 49. Safety Procedures and instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall:

(a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(b) Permit only individuals approved by the authorized user, radiation safety officer, or authorized medical physicist to be present in the treatment room during treatment with the source;

(c) Prevent dual operation of more than one (1) radiation producing device in a treatment room if applicable; and

(d) Develop, implement, and maintain written procedures for responding to an abnormal situation if the operator is unable to place the source in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:

1. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

2. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

3. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by subsection (1)(d) of this section shall be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) The location of the procedures required by subsection (1)(d) of this section; and

(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:

(a) The procedures identified in paragraph (1)(d) of this section; and

(b) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.

(7) A licensee shall retain a copy of the procedures until the licensee no longer possesses the remote afterloader, teletherapy unit, or gamma stereotactic radiosurgery unit.

Section 50. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that shall:

(a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(b) Cause the source to be shielded when an entrance door is opened; and

(c) Prevent the source from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(a) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the unit. This backup power supply may be a battery system.

(b) If the radiation monitor is inoperable, the licensee shall require any individual entering the treatment room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in this section.

(c) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities in which a source is placed within the patient's or human research subject's body, a licensee shall only conduct treatments that allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:

(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:

1. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized

user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For high dose-rate remote afterloader units, require:

1. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Remaining in the unshielded position; or

(b) Lodged within the patient following completion of the treatment.

Section 51. Dosimetry Equipment. (1) Except for low dose-rate remote afterloader sources in which the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:

(a) The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four (4) years. Eighteen (18) to thirty (30) months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past twenty-four (24) months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. If intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with this section for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include:

(a) The date;

(b) The manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by subsections (1) and (2) of this section;

(c) The correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(d) The names of the individuals who performed the calibration, intercomparison, or comparison.

Section 52. Full Calibration Measurements on Teletherapy Units. (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. If spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

2. Following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

3. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) At intervals not exceeding one (1) year.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

(a) The output within +/- three (3) percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error; and

(f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one (1) month for cobalt-60, six (6) months for cesium-137, or at intervals consistent with one (1) percent decay for all other nuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 53. Full calibration measurements on remote afterloader units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and

2. Following any repair of the unit that includes removal of the source or major repair of the components associated with the

source exposure assembly;

(c) At intervals not exceeding one (1) quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds seventy-five (75) days; and

(d) At intervals not exceeding one (1) year for low dose-rate remote afterloader units.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include, as applicable, determination of:

(a) The output within ± five (5) percent;

(b) Source positioning accuracy to within ± one (1) millimeter;

(c) Source retraction with backup battery upon power failure;

(d) Length of the source transfer tubes;

(e) Timer accuracy and linearity over the typical range of use;

(f) Length of the applicators; and

(g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the source to verify inventory and source arrangement at intervals not exceeding one (1) quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.

(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (7) of this section shall be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 54. Full calibration measurements on gamma stereotactic radiosurgery units (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected.

2. Following replacement of the sources or following reinstallation of the gamma mathematically for radioactive decay, stereotactic radiosurgery unit in a new location, and

3. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and

(c) At intervals not exceeding one (1) year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

(a) The output within ± three (3) percent;

(b) Relative helmet factors;

(c) Isocenter coincidence;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error;

(f) Trunnion centricity;

(g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

(h) Helmet microswitches;

(i) Emergency timing circuits; and

(j) Stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one (1) month for cobalt-60 and at intervals consistent with one (1) percent physical decay for all other radionuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 55. Periodic Spot-checks for Teletherapy Units. (1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that shall include determination of:

(a) Timer accuracy, and timer linearity over the range of use;

(b) On-off error;

(c) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) The accuracy of all distance measuring and localization devices used for medical use;

(e) The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation; and

(f) The difference between the measurement made in subsection (1)(e) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

(a) Electrical interlocks at each teletherapy room entrance;

(b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) Viewing and intercom systems;

(e) Treatment room doors from inside and outside the treatment room; and

(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for teletherapy units for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;

(c) An assessment of timer linearity and constancy;

(d) The calculated on-off error;

(e) A determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(f) The determined accuracy of each distance measuring and localization device;

(g) The difference between the anticipated output and the measured output;

(h) Notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each source exposure indicator light, and the viewing and intercom system and doors; and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the teletherapy unit.

Section 56. Periodic Spot-checks for Remote Afterloader Units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

(a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;

(b) Before each patient treatment with a low dose-rate remote afterloader unit; and

(c) After each source installation.

(2) A licensee shall perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of subsection (1) of this section, spot-checks shall, at a minimum, assure proper operation of:

(a) Electrical interlocks at each remote afterloader unit room entrance;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(d) Emergency response equipment;

(e) Radiation monitors used to indicate the source position;

(f) Timer accuracy;

(g) Clock (date and time) in the unit's computer; and

(h) Decayed source activity in the unit's computer.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for remote afterloader units for three (3) years. The record shall include, as applicable:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the remote afterloader unit and source;

(c) An assessment of timer accuracy;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems, and clock and decayed source activity in the unit's computer; and

(e) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the remote afterloader unit.

Section 57. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units. (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

(a) Monthly;

(b) Before the first use of the unit on a given day; and

(c) After each source installation.

(2) A licensee shall:

(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks shall, at a minimum:

(a) Assure proper operation of:

1. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

2. Helmet microswitches;

3. Emergency timing circuits; and

4. Stereotactic frames and localizing devices (trunnions).

(b) Determine:

1. The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation;

2. The difference between the measurement made in subsection (3)(b)1. of this section and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay);

3. Source output against computer calculation;

4. Timer accuracy and linearity over the range of use;

5. On-off error; and

6. Trunnion centricity.

(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks shall assure proper operation of:

(a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Timer termination;

(e) Radiation monitors used to indicate room exposures; and

(f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating

properly as soon as possible.

(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by this section for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(c) An assessment of timer linearity and accuracy;

(d) The calculated on-off error;

(e) A determination of trunnion centricity;

(f) The difference between the anticipated output and the measured output;

(g) An assessment of source output against computer calculations;

(h) Notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions); and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(8) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the gamma stereotactic radiosurgery unit.

Section 58. Additional Technical Requirements for Mobile Remote Afterloader Units. (1) A licensee providing mobile remote afterloader service shall:

(a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(b) Account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by Section 56 of this administrative regulation a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:

(a) Electrical interlocks on treatment area access points;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Applicators, source transfer tubes, and transfer tube-applicator interfaces;

(e) Radiation monitors used to indicate room exposures;

(f) Source positioning (accuracy); and

(g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in subsection (2) of this section, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in subsection (2) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) A licensee shall retain a record of each check for mobile remote afterloader units for three (3) years. The record shall include:

(a) The date of the check;

(b) The manufacturer's name, model number, and serial number of the remote afterloader unit;

(c) Notations accounting for all sources before the licensee departs from a facility;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes, and transfer tube applicator interfaces, and source positioning accuracy; and

(e) The signature of the individual who performed the check.

Section 59. Radiation Surveys. (1) In addition to the survey requirement in 902 KAR 100:019, Section 12, a person licensed under this administrative regulation shall conduct surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall conduct the survey required by subsection (1) of this section at installation of a new source and following repairs to the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.

(3) A licensee shall maintain a record of radiation surveys of treatment units for the duration of use of the unit. The record shall include:

(a) The date of the measurements;

(b) The manufacturer's name, model number and serial number of the treatment unit, source, and instrument used to measure radiation levels;

(c) Each dose rate measured around the source while the unit is in the off position and the average of all measurements; and

(d) The signature of the individual who performed the test.

Section 60. Five (5) year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.

(3) A licensee shall maintain a record of the five (5) year inspections for teletherapy and gamma stereotactic radiosurgery units for the duration of use of the unit. The record shall contain:

(a) The inspector's radioactive materials license number;

(b) The date of inspection;

(c) The manufacturer's name and model number and serial number of both the treatment unit and source;

(d) A list of components inspected and serviced, and the type of service; and

(e) The signature of the inspector.

Section 61. Therapy-related Computer Systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

(1) The source-specific input parameters required by the dose calculation algorithm;

(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) The accuracy of isodose plots and graphic displays;

(4) The accuracy of the software used to determine sealed source positions from radiographic images; and

(5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Section 62. Other Medical Uses of Radioactive Material or Radiation from Radioactive Material. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in Sections 30, 31, 33, 37, 45, and 46 of this administrative regulation if:

(1) The applicant or licensee has submitted the information

required by Section 4(2) through (4) of this administrative regulation; and

(2) The applicant or licensee has received written approval from the cabinet in a license or license amendment and uses the material in accordance with the administrative regulations and specific conditions the cabinet considers necessary for the medical use of the material.

Section 63. Recentness of Training. The training and experience specified in Sections 64 through 77 of this administrative regulation shall have been obtained within the seven (7) years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Section 64. Training for Radiation Safety Officer. Except as provided in Section 67 of this administrative regulation, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 902 KAR 100:072, Section 10 to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in subsections (4) and (5) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a)1. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty (20) college credits in physical science;

2. Have five (5) or more years of professional experience in health physics (graduate training may be substituted for no more than two (2) years of the required experience) including at least three (3) years in applied health physics; and

3. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurements of radioactivity, radiation biology, and radiation dosimetry; or

(b)1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

2. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics;

a. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state; or

b. In clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in 902 KAR 100:072, Sections 67, 69, or 70 of this administrative regulation;

3. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(2)(a) Has completed a structured educational program consisting of both:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiation dosimetry; and

2. One (1) year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or[~~equivalent~~] agreement state license or permit issued by a Commission master material licensee that authorizes similar type of use of radioactive material involving the following:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

c. Securing and controlling radioactive material;

d. Using administrative controls to avoid mistakes in the administration of radioactive material;

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

f. Using emergency procedures to control radioactive material; and

g. Disposing of radioactive material; or

(3)(a) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state pursuant to[~~under~~] 902 KAR 100:072, Section 65(1), and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer, and who meets the requirements in subsections (4) and (5) of this section; or

(b) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities, and

(4) Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsections (5) and in (1)(a)1 and 2 or (1)(b)1 and 2 or (2)(a) or (3)(a) or (3)(b) of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(5) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type of use for which the licensee is seeking approval.

Section 65. Training for an Authorized Medical Physicist. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in subsection (2)(b) and (3) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have[~~a~~] two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics:

1. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state; or

2. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services under the direction of physicians who meet the requirements[~~of authorized users~~] in Section 67, 74, or 77 of this administrative regulation;[~~,~~] and

(c) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality

assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one (1) year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services and shall include:

1. Performing sealed source leak test and inventories;

2. Performing decay corrections;

3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3), and (1)(a) and (b), or subsection (2)(a) and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in Sections 65 or 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type of use for which authorization is sought that includes hands-on device operation, safety operations, clinical use, and the operation of a treatment planning system. This training requirement shall be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type of use for which the individual is seeking authorization.

Section 66. Training for an Authorized Nuclear Pharmacist. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in subsection (2)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least 4,000 hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2,000 hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2)(a) Has completed 700 hours in a structured educational program consisting of both:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Supervised practical experience in a nuclear pharmacy involving:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

c. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

d. Using administrative controls to avoid medical events in the administration of radioactive material; and

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (1)(b) and (1)(c) or (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

Section 67. Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist and Authorized Nuclear Pharmacist. (1)(a) An individual identified as a radiation safety officer, a teletherapy or medical physicist, or a nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or[~~equivalent~~] agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2005 shall not be required to comply with the training requirements of Section 64, 65, or 66, of this administrative regulation respectively:

(b) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or[~~equivalent~~] agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or master material licensee permittee of broad scope between October 24, 2002 and April 29, 2005 is not required to comply with the training requirements of Section 64, 65, or 66 of this administration regulation respectively.

(2)(a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002 who perform only those medical uses for which they were authorized on that date shall not be required to comply with the training requirements of 902 KAR 100:072, Sections 68 through 77.

(b) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state broad scope licensee or a permit issued by a[~~U.S. Nuclear Regulatory~~] Commission master material license broad scope permittee who performs only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005 shall not be required to comply with the training requirements of Sections 68 through 77 of this administrative regulation.

Section 68. Training for Uptake, Dilution, and Excretion Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to[~~under~~] Section 30 of this administrative regulation to be a physician who:

(1)(a) Is certified by a medical specialty board whose certification process[~~includes all of the requirements in subsection (3)(b) of this section and who~~] has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an[~~equivalent~~] agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1. Complete sixty (60) hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)1 through 3(a)2 of this section; and

2. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under Section 69 or 70[~~,~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or[~~equivalent~~] agreement state requirements; or

(3)(a) Has completed sixty (60) hours of training and experience, including a minimum of eight (8) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include:

1. Classroom and laboratory training, in the following areas;

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in Section 67, 68, 69, or 70, of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

f. Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Section 67, 68, 69, or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to[~~under~~] Section 30 of this administrative regulation.

Section 69. Training for Imaging and Localization Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to[~~under~~] Section 31 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete 700 hours of training and experience in basis radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subsection (3)(a)1 through (3)(a)2 of this section; and

(b) Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user pursuant to[~~under~~] Section 70 of this administrative regulation and meets the requirements in subsection (3)(a)2.g of this section, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements; or

(3)(a) Has completed 700 hours of training and experience, including a minimum of eighty (80) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include, at a minimum:

1. Classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user, who meets the requirements in Section 67, 69 or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

f. Administering dosages of radioactive drugs to patients or human research subjects; and

g. Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 69, or 70 and[~~or~~] Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to[~~under~~] Sections 30 and 31 of this administrative regulation.

Section 70. Training for Use of Unsealed Radioactive Material for Which a Written Directive Is Required. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to[~~under~~] Section 33 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an[~~equivalent~~] agreement state, and who meets the requirements in subsection (2)(a)2.f and (b) of this section. To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in subsection (2)(a)1 through 2.e of this section. Eligible training programs shall be approved by:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by the diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2)(a) Has completed 700 hours of training and experience, including a minimum of[~~or~~] 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include:

1. Classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67[~~of Sections 67 and 70~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements. A supervising authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall have experience in administering dosages in the same dosage category or categories (Section 70(2)(a)2.f) of this administrative regulation as the individual requesting authorized user status. The work experience shall involve:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

f. Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three (3) cases in each of the following categories for which the individual is requesting authorized user status:

(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;

(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; or

(iv) Parenteral administration of any other radionuclide, for which a written directive is required; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) and (2)(a)2.f or (2)(a) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to[~~under~~] Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this section, and section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements. The preceptor authorized user, who meets the requirements in subsection (2) of this section, shall have experience in administering dosages in the same dosage category or categories (Section 70(2)(a)2.f) of this administrative regulation as the individual requesting authorized user status.

Section 71. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section and whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in subsection (3)(c) of this section;

(2) Is an authorized user pursuant to[~~under~~] Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(i) or (ii), or Section 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I–131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, 71,, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements. A supervising authorized user who meets the requirements in Section 70 (2)(a) of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

3. Calculating, measuring, and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent a medical event involving the use of radioactive material;

5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to[~~under~~] Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70, 71, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements. A preceptor authorized user, who meets the requirement in Section 70(2) of this administrative regulation shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation.

Section 72. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section, and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in subsection of (3)(c) of this section; or

(2) Is an authorized user pursuant to[~~under~~] Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(ii) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection; and

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology;

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, or[~~and~~] 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements. A supervising authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

3. Calculating, measuring, and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent a medical event involving the use of radioactive material;

5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to[~~under~~] Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70 or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii).

Section 73. Training for the Parenteral Administration of Unsealed Radioactive Material Requiring a Written Directive. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user pursuant to[~~under~~] Section 70 for uses listed in Section 70(2)(a)2.f.(iii) or Section 70(2)(a)2.f.(iv)[~~or~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements[~~regulations~~]; or

(2)(a)1. Is an authorized user pursuant to[~~under~~] Sections 74 or 77 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state and who meets the requirements in paragraph (b) of this subsection[~~(4) of this section~~]; or

2.[~~(3)~~] Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state pursuant to[~~under~~] Sections 74 or 77 of this administrative regulation; and who meets the requirements in paragraph (b) of this subsection[~~(4) of this section~~]; and[~~or~~]

(b)1.[~~(4)(a)~~] Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of a[~~any~~] beta emitter or a[~~any~~] photon-emitting radionuclide with a photon energy less than[~~that~~] 150 keV, or[~~and/or~~] parenteral administration of other radionuclides[~~any other radionuclide~~] for which a written directive is required. The training shall include:

a.[~~1.~~] Radiation physics and instrumentation;

b.[~~2.~~] Radiation protection;

c.[~~3.~~] Mathematics pertaining to the use and measurement of radioactivity;

d.[~~4.~~] Chemistry of radioactive material for medical use; and

e.[~~5.~~] Radiation biology;[~~and~~]

2.[~~(b)~~] Has work experience, under the supervision of an authorized user who meets the requirements in Sections 67, 70, or[~~and~~] 73 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[~~,~~] or[~~equivalent~~] agreement state requirements, in the parenteral administration, for which a written directive is required, of a[~~any~~] beta emitter, or a[~~any~~] photon-emitting radionuclide with a photon energy less than 150 keV, or[~~and/or~~] parenteral administration of other radionuclides[~~any other radionuclide~~] for which a written directive is required. A supervising authorized user who meets the requirements in Section 70 of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both [~~and/or Section 70(2)(a)2.f.(iv)~~]. The work experience shall involve:

a.[~~1.~~] Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

b.[~~2.~~] Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

c.[~~3.~~] Calculating, measuring, and safely preparing patient or human research subjects dosages;

d.[~~4.~~] Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e.[~~5.~~] Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

f.[~~6.~~] Administering dosages to patients or human research subjects, that include at least three (3) cases involving the parenteral administration, for which a written directive is required, of a[~~any~~] beta emitter, or photon-emitting radionuclide with a photon energy less than 150 keV, or a minimum of[~~and/or at least~~] three (3) cases involving the parenteral administration of other radionuclides[~~any other radionuclide~~], for which a written directive is required, or both; and

3.[~~(c)~~] Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (a)1. or 2. of this subsection[~~(2) or (3) of this section~~], and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70 of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv)[~~and/or~~

~~Section 70(2)(a)2.f.(iv)~~] of this administrative regulation or both.

Section 74. Training for Use of Manual Brachytherapy Sources. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized pursuant to[~~under~~] Section 37 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in (2)(c) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum or three (3) years of residency training in a radiation oncology program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education; or

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67[~~Sections 67 and 74~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements at a medical institution, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Checking survey meters for proper operation;

c. Preparing, implanting, and removing brachytherapy sources;

d. Maintaining running inventories of material on hand;

e. Using administrative controls to prevent a medical event involving the use of radioactive material;

f. Using emergency procedures to control radioactive material; and

(b) Has completed three (3) years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this section, or Section 67[~~in sections 67 and 74~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2. of this section; and

(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in[~~of~~] this section, or Section 67[~~and Sections 67 and 74~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized pursuant to[~~under~~] Section 37 of this administrative regulation.

Section 75. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user pursuant to[~~under~~] Section 74 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements; or

(2)(a) Has completed twenty-four (24) hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals. This supervised clinical training shall involve:

1. Examination of each individual to be treated;

2. Calculation of the dose to be administered;

3. Administration of the dose; and

4. Follow up and review of each individual's case history; and

(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 74, or[~~and~~] 75 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

Section 76. Training for use of sealed sources for diagnosis. Except as provided in Section 67 of this administrative regulation, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized pursuant to[~~under~~] Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(1) Is certified by a specialty board whose certification process includes all of the requirements in subsection (2) and (3) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state; or

(2) Has completed eight (8) hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training shall include:

(a) Radiation physics and instrumentation;

(b) Radiation protection;

(c) Mathematics pertaining to the use and measurement of radioactivity; and

(d) Radiation biology; and

(3) Has completed training in the use of the device for the uses requested.

Section 77. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a sealed source for a use authorized pursuant to[~~under~~] Section 46 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an[~~equivalent~~] agreement state and who meets the requirements in (2)(c) and (3) of this section. To have its certification recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three (3) years of residency training in a radiation therapy program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67[~~Sections 67 and 77~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements at a medical institution, involving:

a. Reviewing full calibration measurements and periodic spot-checks;

b. Preparing treatment plans and calculating treatment doses and times;

c. Using administrative controls to prevent a medical event involving the use of radioactive material;

d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

e. Checking and using survey meters; and

f. Selecting the proper dose and how it is to be administered; and

(b) Has completed three (3) years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in this section, or Section 67[~~Sections 67 and 77~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2 of this section; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b), and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this section, or Section 67[~~Sections 67 and 77~~] of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission[,] or[~~equivalent~~] agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(3) Has received training in device operation, safety procedures, and clinical use for the type of use for which authorization is sought, This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type of use for which the individual is seeking authorization.

Section 78. Alternative Training. During a two (2) year period after the effective date of October 24, 2005, alternative training and experience requirements shall be available. Licensees shall have the option of complying with either the training requirements of Section 78 of this administrative regulation or the new requirements in Sections 65 through 77 of this administrative regulation. After October 24, 2007, licensee shall not have the option of using Section 78 of this administrative regulation. Except as provided in Section 67 of this administrative regulation, the licensee shall require for:

(1) A radiation safety officer, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 10 of this administrative regulation to be an individual who:

(a) Is certified by the:

1. American Board of Health Physics in Comprehensive Health Physics;

2. American Board of Radiology;

3. American Board of Nuclear Medicine;

4. American Board of Science in Nuclear Medicine;

5. Board of Pharmaceutical Specialties in Nuclear Pharmacy;

6. American Board of Medical Physics in radiation oncology physics;

7 Royal College of Physicians and Surgeons of Canada in nuclear medicine;

8. American Osteopathic Board of Radiology; or

9. American Osteopathic Board of Nuclear Medicine;

(b) Has had classroom and laboratory training and experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiopharmaceutical chemistry; and

2. One (1) year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license that authorizes the medical use of radioactive material; or

(c) Is an authorized user identified on the licensee's license.

(2) Authorized user of a radiopharmaceutical for uptake, dilution, and excretion in Section 30(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;

2. Diagnostic radiology by the American Board of Radiology;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

1. Forty (40) hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiopharmaceutical chemistry; and

2. Twenty (20) hours of supervised clinical experience under the supervision of an authorized user and that includes:

a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

c. Administering dosages to patients or human research subjects and using syringe radiation shields;

d. Collaborating with the authorized user in the interpretation of radioisotope test results; and

e. Patient or human research subject follow up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(3) Authorized user for imaging and localization studies using a radiopharmaceutical, generator, or reagent kit in Section 31(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;

2. Diagnostic radiology by the American Board of Radiology;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(c)1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiopharmaceutical chemistry; and

e. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user that includes:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

c. Calculating and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent the medical event of radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

f. Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

3. 500 hours of supervised clinical experience under the supervision of an authorized user that includes:

a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

c. Administering dosages to patients or human research subjects and using syringe radiation shields;

d. Collaborating with the authorized user in the interpretation of radioisotope test results; and

e. Patient or human research subject follow up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(4) The authorized user of radiopharmaceuticals for therapeutic use in Section 33 of this administrative regulation to be a physician who:

(a) Is certified by:

1. The American Board of Nuclear Medicine;

2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or

4. The American Osteopathic Board of Radiology after 1984; or

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

1. Eighty (80) hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

a. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals; and

b. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals.

(5) The authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten (10) individuals.

(6) The authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three (3) individuals.

(7) The authorized user of a brachytherapy source in Section 36 of this administrative regulation for therapy to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Checking survey meters for proper operation;

c. Preparing, implanting, and removing sealed sources;

d. Maintaining running inventories of material on hand;

e. Using administrative controls to prevent a medical event involving radioactive material; and

f. Using emergency procedures to control radioactive material; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

a. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

b. Selecting the proper brachytherapy sources and dose and method of administration;

c. Calculating the dose; and

d. Post-administration follow-up and review of case histories in collaboration with the authorized user.

(8) The authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(a) Twenty-four (24) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:

1. Examination of each individual to be treated;

2. Calculation of the dose to be administered;

3. Administration of the dose; and

4. Follow up and review of each individual's case history.

(9) The authorized user of a sealed source for diagnosis in a device listed in Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(a) Is certified in:

1. Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Nuclear medicine by the American Board of Nuclear Medicine;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) Has had eight (8) hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

2. Radiation biology;

3. Radiation protection; and

4. Training in the use of the device for the uses requested.

(10) The authorized user of a sealed source for therapeutic medical devices listed in Section 46 of this administrative regulation to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology";

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

a. Review of the full calibration measurements and periodic spot-checks;

b. Preparing treatment plans and calculating treatment times;

c. Using administrative controls to prevent medical events;

d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical device or console; and

e. Checking and using survey meters; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

a. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment, and any limitations or contraindications;

b. Selecting the proper dose and how it is to be administered;

c. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

d. Postadministration follow up and review of case histories.

(11) The authorized medical physicist shall be an individual who:

(a) Is certified by the American Board of Radiology in:

1. Therapeutic radiological physics;

2. Roentgen ray and gamma ray physics;

3. X-ray and radium physics; or

4. Radiological physics; or

(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or

(c) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a medical physicist at a medical institution that includes the tasks listed in Sections 24, 52, 53, 54, 55, 56, 57 and 58 of this administrative regulation as applicable.

(12) The authorized nuclear pharmacist to be a pharmacist

who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b)1. Has completed 700 hours in a structured educational program consisting of both:

a. Didactic training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

b. Supervised experience in a nuclear pharmacy involving the following:

(i) Shipping, receiving, and performing related radiation surveys;

(ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) Using administrative controls to avoid mistakes in the administration of radioactive material;

(v) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

2. Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

(13) An authorized experienced nuclear pharmacist must be a pharmacist who has completed a structured educational program as specified in subsection (12)(b)(1) of this section before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist shall not be required to comply with the requirements for a preceptor statement (subsection (12)(b)(2) of this section) and recentness of training (Section 63 of this administrative regulation) to qualify as an authorized nuclear pharmacist.

Section 79. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the license from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes guidelines for the use of radionuclides in the health arts.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:073 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations thereby ensuring that Kentucky licensees are bound by the same requirements as their counterparts across the country.

(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 corrects an omitted citation.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment updates those regulations created to implement that statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will create conformance between state and federal regulations, thus reducing confusion between them.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist all 190 medical and radiopharmaceutical licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.

(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: Licensees will have to be aware of these changes. However, as they are presently following federal regulations, regulated entities will not be required to change current practice.

(b) In complying with this administrative regulation or amendment, how much will
it cost each of the entities identified in question (3): The regulation will have no cost associated with compliance

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licenses will benefit from consistency between state and 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 will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required to implement this regulation. The existing program is covered by General Funds 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: An increase in fees or funding will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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? No state or local government divisions will be impacted by this amendment. However, the University of Louisville and the University of Kentucky will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended their regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:010 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 have no effect on the revenues or expenditures of state or local governments.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be produced by this regulation the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be produced by this regulation in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, 10 C.F.R. 35, and 45 C.F.R. 46.

2. State compliance standards. This administrative regulation provides requirements for the use of radionuclides in the healing arts.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

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. There are no different, stricter or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:100. Industrial radiography.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 34, 71, 21 C.F.R. 1020.40

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes radiation safety requirements for industrial radiographic operations and shall apply to licensees or registrants who use sources of radiation for industrial radiography.

Section 1. Specific License and Registration Requirements for Industrial Radiography. (1) An Application for Radioactive Material License, incorporated by reference in 902 KAR 100:040, for a specific license or registration for the use of sources of radiation in industrial radiography shall be approved if the applicant meets the following requirements:

(a) Except as provided in subsection (3)(k) of this section, the applicant shall satisfy the general requirements specified in 902 KAR 100:040, Section 4, or 100:110 and 100:145, and any specific requirements contained in this administrative regulation.

(b) The applicant shall submit an adequate program for training a radiographer and a radiographers' assistant that meets the requirements of Section 14 of this administrative regulation.

1. After June 30, 2002, an applicant shall not describe the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

2. From June 30, 2000, to June 30, 2002, an applicant shall affirm that an individual acting as an industrial radiographer shall be certified in radiation safety by a certifying entity as described in 10 C.F.R. Part 34, Appendix A, before commencing duty as a radiographer. This affirmation shall substitute for a description of the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

(c) The applicant shall submit procedures for verifying and documenting the certification status of a radiographer and for ensuring that the certification of an individual acting as a

radiographer remains valid.

(d) The applicant shall submit written operating and emergency procedures as described in Section 15 of this administrative regulation.

(e) The applicant shall submit a description of a program for inspections of the job performance of a radiographer and a radiographers' assistant at intervals not to exceed six (6) months as described in Section 14 of this administrative regulation.

(f) The applicant shall submit a description of the applicant's overall organization structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(g) The applicant shall identify and list the qualifications of the individual designated as the radiation safety officer (RSO) and of the potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures.

(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant shall describe the procedures for performing and the qualifications of the person authorized to do the leak testing.

(i) If the applicant intends to analyze the applicant's own wipe samples, the application shall include a description of the procedures to be followed, which shall include:

1. Instruments to be used;

2. Methods of performing the analysis; and

3. Pertinent experience of the person analyzing the wipe samples.

(j) If the applicant intends to perform an "in-house" calibration of a survey instrument, the applicant shall describe the method to be used and the relevant experience of the person performing the calibration. A calibration shall be performed according to the procedures and at the intervals prescribed in Section 5 of this administrative regulation.

(k) The applicant shall identify and describe the location of each field station and permanent radiographic installation.

(l) The applicant shall identify the location where records required by this and other administrative regulations in 902 KAR Chapter 100 shall be maintained.

(2) A licensee shall maintain a copy of its license, documents incorporated by reference, and amendments to these items until superseded by new documents approved by the cabinet or until the cabinet terminates the license.

Section 2. Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:

(1)(a) Except as provided in subsection (3)(k) of this section, a radiographic exposure device, source assembly, or sealed source and associated equipment shall meet the provisions specified in American National Standard Institute (ANSI) N432-1980, Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography; and

(b) Engineering analysis shall be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. If upon review, the cabinet determines that the engineering analysis demonstrates that actual testing of the component is not necessary, the engineering analysis shall be an acceptable alternative.

(2)(a) A radiographic exposure device shall have attached to it by the user, a durable, legible, clearly visible label bearing the:

1. Chemical symbol and mass number of the radionuclide in the device;

2. Activity and date on which this activity was last measured;

3. Model or product code and serial number of the sealed source;

4. Manufacturer of the sealed source; and

5. Name, address, and telephone number of the licensee or registrant.

(b) A radiographic exposure device intended for use as a Type B transport container shall meet the applicable provisions of 10 C.F.R. 71.

(c) Modification of an exposure device, source changer, source assembly, or associated equipment shall be prohibited, unless the design of a replacement component, including source holder, source assembly, control, or guide tube, shall not compromise the design safety features of the system.

(3) In addition to the provisions specified in subsections (1) and (2) of this section, the following provisions shall apply to a radiographic exposure device, source assembly, and associated equipment that allow the source to be moved out of the device for radiographic operation or to a source changer:

(a) The coupling between the source assembly and the control cable shall be designed in a manner so that the source assembly cannot:

1. Become disconnected if cranked outside the guide tube; and

2. Be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(b) The device shall automatically secure the source assembly if it is cranked back into the fully shielded position within the device. The securing system shall be released only by a deliberate operation on the exposure device.

(c) Each outlet fitting, lock box, and drive cable fitting on a radiographic exposure device shall be equipped with a safety plug or cover, which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter.

(d) A sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube shall have passed:

1. A crushing test that closely approximates the crushing forces likely to be encountered during use; and

2. A kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(f) Guide tubes shall be used if moving the source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out the end of the guide tube shall be attached to the outermost end of the guide tube during a radiographic operation.

(h) The guide tube exposure head connection shall withstand the tensile test for control units specified in ANSI N432-1980.

(i) A source changer shall provide a system for assuring that the source cannot be accidentally withdrawn from the changer if connecting or disconnecting the drive cable to or from a source assembly.

(j) A radiographic exposure device and associated equipment in use after January 10, 1996, shall comply with the provisions of this section.

(k) Equipment used in industrial radiography operations need not comply with paragraph 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiographic equipment can realistically exert on the lever or crankshaft of the drive mechanism.

Section 3. Limits on External Levels of Radiation for Radiographic Exposure Devices and Storage Containers. The maximum exposure rate limits for storage containers and source changers shall be:

(1) 200 millirems (2 millisieverts) per hour at any exterior surface; and

(2) Ten (10) millirems (0.1 millisieverts) per hour at one (1) meter from any exterior surface, with the sealed source in the shielded position.

Section 4. Locking of Radiographic Exposure Devices, Storage Containers, and Source Containers. (1) A radiographic exposure device shall have a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source from its shielded position.

(a) An exposure device or its container shall be kept locked, and if a keyed lock, with the key removed at all times except:

1. If under the direct surveillance of a radiographer or radiographer's assistant; or

2. As authorized by Section 19 of this administrative regulation.

(b) During radiographic operation the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.

(c) A sealed source storage container and source changer shall be:

1. Provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; and

2. Kept locked, and if a keyed lock, with the key removed at all times if containing sealed sources, except if under the direct surveillance of a radiographer or radiographer's assistant.

(2) The control panel of a radiation machine shall be:

(a) Equipped with a lock that prevents the unauthorized use of an x-ray system or the accidental production of radiation; and

(b) Kept locked and the key removed at all times, except if under the direct visual surveillance of a radiographer or radiographer's assistant.

Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at a location where a source of radiation is present in order to perform radiation surveys as required by this administrative regulation and 902 KAR 100:019, Section 12(1).

(2) A radiation survey instrument shall be calibrated:

(a) At intervals not to exceed six (6) months;

(b) After an instrument servicing, except for battery changes;

(c)1. At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments;

2. Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments;

3. At three (3) points between two (2) and 1,000 millirems (90.02 and ten (10) millisieverts) per hour for digital instruments; and

(d) So that an accuracy within plus or minus twenty (20) percent of the calibration source can be demonstrated at the points checked.

(3) A record of each calibration shall be maintained for three (3) years after the calibration date for inspection by the cabinet.

(4) Instrumentation required by this section shall have a range so that two (2) millirems (0.02 millisieverts) per hour through one (1) rem (0.01 sievert) per hour may be measured.

Section 6. Leak Testing and Replacement of Sealed Sources. (1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, opening, or modification of a sealed source shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state.

(2) A sealed source shall be tested for leakage:

(a) At intervals not to exceed six (6) months;

(b) Using a method approved by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state; and

(c)1. By taking a wipe sample from the nearest accessible point to the sealed source where contamination might accumulate.

2. The wipe sample shall be analyzed for radioactive contamination.

3. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

4. The analysis shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.

(3) A sealed source shall not be used by the licensee until tested for leakage, except if:

(a) The source is accompanied by a certificate from the transferor showing it to have been leak-tested within six (6) months preceding the transfer; or

(b) The source has been in storage and not in use for six (6) months or less.

(4)(a) A test conducted in accordance with subsections (1) and (2) of this section that reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking.

(b) The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with 902 KAR 100:021.

(c) The licensee shall file a report with the Manager, Radiation Health Branch, Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within five (5) days of a test with results that exceed the threshold in this subsection.

(d) The report shall describe the equipment involved, the test results, and the corrective action taken.

(5) An exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed twelve (12) months.

(a) The analysis shall be:

1. Capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

2. Performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.

(b) If testing reveals the presence of 0.005 microcuries (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made.

(c) If the evaluation reveals that the S-tube is worn through, the device shall not be used again.

(d) A DU shielded device shall:

1. Not require testing for DU contamination while in storage and not in use; and

2. Require testing before use or transfer if the interval of storage exceeded twelve (12) months.

(6)(a) A licensee shall maintain records of leak test results for each sealed source or device containing DU.

(b) The results shall be stated in units of microcuries (becquerels).

(c) The licensee shall retain a record for three (3) years after it is made or until the source in storage is removed.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for each source of radiation and each device containing depleted uranium received or possessed in accordance with the license.

(2) Records of the inventories shall be maintained for three (3) years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:

(a) Radionuclide;

(b) Number of curies (becquerels) or mass (for DU) in a device;

(c) Location of sealed sources and devices;

(d) Date of the inventory;

(e) Name of the individual making the inventory; and

(f) Manufacturer, model number, and serial number of each sealed source or device, as appropriate.

Section 8. Utilization Logs. A licensee or registrant shall maintain utilization logs, which shall be kept available for inspection by the cabinet for three (3) years from the date of the recorded event, at the address specified in the license or on the registration, showing for a source of radiation the following information:

(1) A description including make, model, and serial number of the exposure device, radiation machine, or transport or storage container in which a sealed source is located;

(2) Identity and signature of the radiographer to whom assigned;

(3) Site or plant where used and dates of use;

(4) Date a source of radiation is removed from storage and returned to storage; and

(5) For permanent radiographic installations, the dates a radiation machine is energized.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Radiation Machines, Transport and Storage Containers, Associated Equipment, Source Changes, and Survey Instruments. (1) A licensee or registrant shall perform:

(a) Visual and operability checks on survey meters, radiographic exposure devices, radiation machines, transport and storage containers, associated equipment, and source changers before use on a day the equipment is to be used to ensure that the:

1. Equipment is in good working condition;

2. Source is adequately shielded; and

3. Required labeling is present; and

(b) An operability check of survey instruments using check sources or other appropriate means.

(2) If an equipment problem is found, the equipment shall be removed from service until repaired.

(3) A licensee or registrant shall have written procedures for:

(a) Inspection and routine maintenance of radiographic exposure devices, radiation machines, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three (3) months, or before the first use in order to ensure the proper functioning of components important to safety;

(b) Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials; and

(c) Inspection and maintenance program to assure that a Type B package is shipped and maintained in accordance with the certificate of compliance, or other approval.

(4) A replacement component shall meet design specifications.

(5) If an equipment problem is found, the equipment shall be removed from service until repaired.

(6)(a) A record of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments and of any maintenance performed in accordance with subsections (1) through (3) of this section shall be kept for three (3) years for inspection by the cabinet.

(b) The record shall include:

1. The date of check or inspection;

2. Name of the inspector;

3. Equipment involved;

4. Problems found; and

5. What repair and maintenance was done.

Section 10. Permanent Radiographic Installations. (1) Permanent radiographic installations with an entrance used for personnel access to a high radiation area shall have:

(a) Entrance controls of the type described in 902 KAR 100:019, Section 14(1)(b) and (c) and Section 14(2) that reduce the radiation level upon entry into the area; or:

(b) Both visible and audible warning signals to warn of the presence of radiation.

1. The visible signal shall be activated by radiation if the source is exposed or the machine is energized.

2. The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed or the machine is energized.

(2)(a) The alarm system shall be tested for proper operation with a radiation source at the beginning of each day before the installation is used for radiographic operations.

(b) The test shall include a check of the visible and audible signals.

(c) Each entrance control device that reduces the radiation level upon entry, as designated in subsection (1) of this section, shall be tested monthly.

(3)(a) If an entrance device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired within seven (7) calendar days.

(b) The facility may continue to be used during the seven (7) day repair period if the licensee:

1. Implements the continuous surveillance requirements of Section 19 of this administrative regulation; and

2. Uses an alarming ratemeter.

(4) Records of tests for entrance control and audible and visual alarms shall be maintained for inspection by the cabinet for three (3) years from the date of the test.

Section 11. Labeling, Storage, and Transportation. (1) A licensee shall not use a source changer or a container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors (magenta, purple or black on a yellow background, having a minimum diameter of twenty-five (25) millimeters), and the following words:

(a)1. CAUTION*; or

2. DANGER;

(b) RADIOACTIVE MATERIAL; and

(c) NOTIFY:

1. CIVIL AUTHORITIES; or

2. NAME OF COMPANY.

(2) The licensee shall not transport radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with 10 C.F.R. Part 71.

(3) A locked radiographic exposure device, radiation machine, or storage container shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner that minimizes danger from explosion or fire.

(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the radioactive material from the vehicle.

Section 12. Conducting Industrial Radiographic Operations. (1)(a) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one (1) other qualified radiographer or an individual who has met the requirements of Section 14 of this administrative regulation. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry.

(b) Radiography shall not be performed unless more than one (1) qualified individual is present.

(2) A radiographic operation conducted at a location of use authorized on the license shall be conducted in a permanent radiographic installation, unless specifically authorized by the cabinet.

(3) A licensee shall have one (1) year from the effective date of June 27, 1998 to meet the requirement for having two (2) qualified individuals present at a location other than a permanent radiographic installation, as specified in subsection (1) of this section.

Section 13. Radiation Safety Officer for Industrial Radiography. The radiation safety officer (RSO) shall ensure that radiation safety is being performed in the daily operation of the licensee's program in accordance with approved procedures and regulatory requirements. (1) The minimum qualifications, training, and experience for RSOs for industrial radiography is as follows:

(a) Completion of the training and testing requirements of Section 14 of this administrative regulation;

(b) 2,000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

(2) The cabinet shall consider alternatives if the RSO has:

(a) Appropriate training or experience in the field of ionizing radiation; and

(b) Adequate formal training in establishing and maintaining a radiation safety protection program.

(3) The specific duties and authorities of the RSO shall include:

(a) Establishing and overseeing operating, emergency and ALARA procedures as required by 902 KAR 100:019, and reviewing them regularly to ensure that the procedures in use

conform to current 902 KAR 100:019 procedures, and conform to other requirements in 902 KAR Chapter 100 and to the license conditions.

(b) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection is taught;

(c) Ensuring that:

1. Required radiation surveys and leak tests are performed and documented in accordance with 902 KAR Chapter 100, including corrective measures if levels of radiation exceed established limits;

2. Personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel;

3. Records are kept of the monitoring results;

4. Timely notifications are made as required by 902 KAR 100:019, Section 40; and

5. Operations are conducted safely; and

(d) Assuming control for instituting corrective actions including stopping of operations, if necessary.

(4) A licensee or registrant shall have two (2) years from the effective date of June 27, 1999 to meet the requirements of subsections (1) and (2) of this section.

Section 14. Training. (1) A licensee or registrant:

(a) Shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has received:

1. Formal training in the subjects identified in subsection (4) of this section;

2. At least two (2) months of on-the-job training; and

3. Is certified through a radiographer certification program in accordance with the criteria specified in Section 1 of this administrative regulation; or

(b) May, until two (2) years from the effective date of June 27, 1999, allow an individual who has not met the requirements of this section, to act as a radiographer if the individual has:

1. Received training in the subjects identified in subsection (4) of this section; and

2. Demonstrated an understanding of the subjects by successful completion of a written examination previously submitted to and approved by the cabinet;

(c) Shall not permit an individual to act as a radiographer until the individual has:

1. Received copies of and instructions in the following:

a. Provisions contained in this administrative regulation;

b. Provisions of 902 KAR 100:019, 100:040, 100:070, and 100:165;

c. Conditions of the license or registration certificate issued by the cabinet; and

d. The licensee's or registrant's approved operating and emergency procedures;

2. Demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material;

3. Received training in the:

a. Use of the licensee's sources of radiation, the registrant's radiation machine, and other radiation exposure devices;

b. Daily inspection of devices and associated equipment; and

c. Use of radiation survey instruments; and

4. Demonstrated an understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in paragraphs (a) and (c) of this subsection, by successful completion of a practical examination covering the material;

(d) Shall not permit an individual to act as a radiographer's assistant as defined in 902 KAR 100:010 until the individual has:

1. Received copies of and instructions in the following:

a. Provisions contained in this administrative regulation;

b. Requirements of 902 KAR 100:019, 100:040, 100:070, and 100:165;

c. Conditions of the license or registration certificate issued by the cabinet; and

d. The licensee's or registrant's operating and emergency procedures;

2. Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, radiation machines, associated equipment, and radiation survey instruments that the assistant uses; and

3. Demonstrated:

a. Understanding of the instructions provided in paragraph (a) of this subsection by successfully completing a written test on the subjects covered; and

b. Competence in the use of hardware described in paragraph (b) of this subsection by successfully completing a practical examination on the use of the hardware; and

(e) Shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.

(2)(a) Except in those operations in which a single individual shall serve as both radiographer and RSO and shall perform all radiography operations, the RSO or designee shall conduct an inspection program of the job performance of a radiographer and radiographer's assistant to ensure that 902 KAR Chapter 100, license requirements, and the applicant's operating and emergency procedures are followed.

(b) The inspection program shall include observation of the performance of the radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed six (6) months;

(c) If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six (6) months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of subsection (3) of this section and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (1)(d)2 of this section by a practical examination before either person may next participate in a radiographic operation; and

(d) The cabinet shall consider alternatives in those situations in which the individual serves as both radiographer and RSO.

(3) Records of training specified in subsection (1)(c) of this section shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made.

(a) Records shall include:

1. Radiographer certification documents;

2. Verification of certification status;

3. Copies or written tests;

4. Dates of oral tests and practical examinations;

5. Names of individuals conducting and receiving the oral and practical examinations; and

6. Documentation of annual refresher safety training and semi-annual inspections of job performance for a radiographer and a radiographer's assistant, which shall include:

a. Topics discussed during the refresher safety training;

b Dates the annual refresher safety training was conducted; and

c. Names of the instructors and attendees.

(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliances observed by the RSO.

(4) The licensee or registrant shall include the following subjects required in subsection (1)(b) of this section:

(a) Fundamentals of radiation safety including:

1. Characteristics of gamma radiation;

2. Units of radiation dose and quantity of radioactivity;

3. Hazards of exposure to radiation;

4. Levels of radiation from radioactive material; and

5. Methods of controlling radiation dose by time, distance, and shielding;

(b) Radiation detection instruments including:

1. Use, operation, calibration, and limitations of radiation survey instruments;

2. Survey techniques; and

3. Use of personnel monitoring equipment;

(c) Equipment to be used including:

1. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including

pictures or models of source assemblies (pigtails);

2. Storage, control, and disposal of radioactive material;

3. Inspection and maintenance of equipment; and

4. Operation and control of radiation machines;

(d) The requirements of 902 KAR Chapter 100, as applicable; and

(e) Case histories of accidents in radiography.

(5) A licensee or registrant shall have one (1) year from June 27, 1998 to comply with the additional training requirements specified in subsections (1)(c) and (d) of this section.

(6) Licensees and registrants shall have one (1) year from June 27, 1999, to comply with the certification requirements specified in subsection (1) of this section. Records of radiographer certification maintained in accordance with subsection (3) of this section shall provide appropriate affirmation of certification requirements specified in subsection (1) of this section.

Section 15. Operating and Emergency Procedures. (1) A licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(a) The handling and use of sources of radiation to be employed so an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(b) Methods and occasions for conducting radiation surveys;

(c) Methods for controlling access to radiographic areas;

(d) Methods and occasions for locking and securing a source of radiation, radiographic exposure device, or transport and storage container;

(e) Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;

(f) Transportation of sources of radiation to field locations, including:

1. Packing of a radiographic exposure device and storage container in a vehicle;

2. Placarding of a vehicle if needed; and

3. Control of sources of radiation during transportation;

(g) Minimizing exposure of individuals if an accident occurs;

(h) The procedure for notifying proper personnel if an accident occurs;

(i) Maintenance of records; and

(j) The inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, storage containers, survey instruments, and transport containers.

(2) The licensee or registrant shall maintain copies of current operating and emergency procedures until the cabinet terminates the license.

(3) Superseded material shall be retained for three (3) years after the change is made.

Section 16. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears on the trunk of the body a direct reading pocket dosimeter, an operating alarm ratemeter, and a personal dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor.

(2) The wearing of an alarm ratemeter shall not be required for permanent radiography facilities in which another appropriate alarming or warning device is in routine use or during radiographic operations using radiation machines.

(3) Pocket dosimeters shall have a range from zero to at least 200 milliroentgens (two (2) millisieverts) and shall be recharged daily or at the start of a shift. Electronic personal dosimeters may be used in place of ion-chamber pocket dosimeters only.

(4) A personal dosimeter shall be assigned to, and worn by, only one (1) individual.

(5) A film badge shall be replaced each month, and other personal dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at intervals not to exceed three (3) months.

(6) After replacement, each personal dosimeter shall be processed as soon as possible.

(7) Direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters, shall be read and exposures recorded at the beginning and end of a shift.

(a) If an individual's pocket dosimeter is found to be off scale, or if the electronic personal dosimeter reads greater than 200 millirems (two (2) millisieverts), and the possibility of radiation exposure cannot be ruled out as the cause:

1. The individual's personal dosimeter shall be sent for processing within twenty-four (24) hours;

2. Radiographic operations by the individual shall cease; and

3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made by the RSO or the RSO's designee. The results shall be included in the records maintained in accordance with paragraph (b) of this subsection and subsection (10)(b)[~~(9)(b)~~] of this section.

(b) A licensee or registrant shall maintain the following exposure records:

1. Direct reading dosimeter readings and yearly operability checks for three (3) years after the record is made;

2. Reports received from the NVLAP processor of personal dosimeter results until the cabinet terminates the license; and

3. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged personal dosimeters, until the cabinet terminates the license.

(8) If a personal dosimeter is lost or damaged, the worker shall cease work immediately until:

(a) A replacement personal dosimeter meeting the requirements of subsection (1) of this section is provided; and

(b) The exposure is calculated for the time period from issuance to loss or damage of the personal dosimeter. The results of the calculated exposure and the time period for which the personal dosimeter was lost or damaged shall be included in the records maintained in accordance with subsection (7) of this section.

(9)(a) Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to exceed twelve (12) months.

(b) Acceptable dosimeters shall read within plus or minus twenty (20) percent of the true radiation exposure.

(10)(a) An alarm ratemeter shall:

1. Be checked to ensure that the audible alarm functions properly prior to use at the start of a shift;

2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr (5mSv/hr);

3. Require special means to change the preset alarm functions;

4. Be calibrated at periods not to exceed twelve (12) months for correct response to radiation; and

5. Alarm within plus or minus twenty (20) percent of the true radiation dose rate.

(b) Records of alarm ratemeter calibrations shall be maintained for three (3) years after the record is made.

Section 17. Documents Required at Field Stations and Temporary Job Sites. A licensee or registrant shall have the following records available for inspection by the cabinet at each field station, if applicable, and at each job site:

(1) A copy of the operating and emergency procedures;

(2) A current copy of the radioactive material license or registration certificate;

(3) A copy of 902 KAR 100:019, 100:100, and 100:165;

(4) Latest survey records required by Section 22 of this administrative regulation;

(5) Records of direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters readings, as required by Section 16 of this administrative regulation;

(6) Evidence of The latest instrument calibration of the radiation survey instrumentation in use at the site, as required by Section 5 of this administrative regulation;

(7) Utilization records for each radiographic exposure device

dispatched from that location, as required by Section 8 of this administrative regulation;

(8) Records of equipment problems identified in daily checks of equipment required by Section 9 of this administrative regulation;

(9) Records of alarm system and entrance control checks required by Section 10 of this administrative regulation, if applicable;

(10) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and electronic personal dosimeters, as required by Section 16 of this administrative regulation;

(11) The shipping papers for the transportation of radioactive materials required by 902 KAR 100:070; and

(12) If operating in accordance with reciprocity pursuant to 902 KAR 100:065, a copy of the agreement state or U.S. Nuclear Regulatory Commission license authorizing the use of radioactive materials.

Section 18. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:

(a) At least one (1) operable, calibrated survey instrument for every exposure device or radiation machine in use;

(b) A current whole body personnel monitor (TLD or film badge) for an individual performing radiographic operations;

(c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for a worker performing radiographic operations;

(d) Appropriate barrier ropes and signs; and

(e) An operable, calibrated, alarming ratemeter for every person performing radiographic operations using a radiographic exposure device.

(2) A radiographer at a job site shall have on the radiographer's person a valid certificate ID card issued by a certifying entity.

(3) An industrial radiographic operation shall not be performed if the items in subsections (1) and (2) of this section are not available at the job site or they are inoperable.

(4) During an inspection by the cabinet, the cabinet shall terminate an operation if items in subsections (1) and (2) of this section are not available or not operable, or if the required number of radiographic personnel are not present. Operations shall not be resumed until required conditions are met.

Section 19. Surveillance. During a radiographic operation, a radiographer or the other individual present, as required by Section 12 of this administrative regulation, shall maintain direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at a permanent radiographic installation where:

(1) Entryways are locked; and

(2) The requirements of Section 10 of this administrative regulation are met.

Section 20. Posting. (1) An area in which radiography is being performed shall be conspicuously posted, as required in 902 KAR 100:019, Section 24(1) and (2).

(2) Exceptions listed in 902 KAR 100:019 do not apply to an industrial radiographic operation.

Section 21. Special Provisions and Exemptions for Cabinet X-ray Systems. (1) The use of a certified or certifiable cabinet x-ray system shall be exempt from the requirements of this administrative regulation, except for the following:

(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:

1. A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.

2. A test for proper operation of interlocks shall be conducted and recorded at intervals not to exceed six (6) months.

3. A registrant shall perform an evaluation of the radiation dose limits to determine compliance with 902 KAR 100:019, Section 10, and 21 C.F.R. 1020.40, Cabinet X-ray Systems, at intervals not to exceed one (1) year.

4. Records shall be maintained demonstrating compliance with subsections (1)(a)1 and 2 of this section until disposal is authorized by the cabinet.

5. Records of the evaluation required by subparagraph 3 of this paragraph shall be maintained for two (2) years after the evaluation is performed.

(b)1. Certified cabinet x-ray systems shall be maintained in compliance with 21 C.F.R. 1020.40, Cabinet X-ray Systems.

2. A modification shall not be made to the system unless prior cabinet approval has been granted.

(2) An industrial use of a hand-held light intensified imaging device shall be exempt from the requirements of this administrative regulation if the dose rate eighteen (18) inches from the source of radiation to any individual does not exceed two (2) millirem per hour. A device exceeding this limit shall meet the applicable requirements of this administrative regulation and the licensing or registration requirements of 902 KAR 100:040 and 100:110, as applicable.

Section 22. Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at a location of radiographic operations.

(2) A survey with a radiation survey instrument shall be made after a radiographic exposure of the radiographic exposure device and the guide tube if approaching the device or guide tube to determine that the sealed source has been returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(3) A survey shall be conducted of the radiographic exposure device with a calibrated radiation survey instrument if the source is exchanged and if a radiographic exposure device is placed in a storage area, to ensure that the source is in its shielded position.

(4) A physical radiation survey shall be made after a radiographic exposure using radiographic machines to determine that the machine is "off."

(5) Records shall be kept of the exposure device survey conducted before the device is placed in storage as specified in subsection (3) of this section if that survey is the last one performed in the workday. The records shall be maintained for inspection by the cabinet for three (3) years after it is made.

Section 23. Supervision of Radiographer's Assistant. (1) If a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, or conducts radiation surveys required by Section 22 of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure or the radiation machine is off, the radiographer's assistant shall be under the personal supervision of a radiographer.

(2) The radiographer shall:

(a) Be physically present at the site where a source of radiation and associated equipment is being used;

(b) Watch, by direct visual observation, the performance of the operations performed by the radiographer's assistant referred to in this section; and

(c) Be in close proximity so that immediate assistance shall be given if required.

Section 24. Reporting Requirements. (1) In addition to the reporting requirements specified in 902 KAR 100:040, Section 15, and in accordance with other sections of this administrative regulation, a licensee or registrant shall provide a written report to the
Cabinet for Health and Family Services, Radiation Health Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:

(a) Unintentional disconnection of the source assembly from the control cable;

(b) Inability to retract the source assembly to its fully shielded

position and secure it in this position;

(c) Failure of a component, critical to safe operation of the device, to properly perform its intended function;

(d) Failure of an indicator on a radiation machine to show that radiation is being produced;

(e) Failure of an exposure switch to terminate production of radiation if turned to the off position; or

(f) Failure of a safety interlock to terminate x-ray production.

(2) The licensee or registrant shall include the following information in a report submitted in accordance with subsection (1) of this section:

(a) A description of the equipment problem;

(b) Cause of an incident, if known;

(c) Manufacturer and model number of equipment involved in the incident;

(d) Place, time, and date of the incident;

(e) Actions taken to establish normal operations;

(f) Corrective actions taken or planned to prevent recurrence; and

(g) Qualifications of personnel involved in the incident.

(3) A report of an overexposure submitted under 902 KAR 100:019, Section 40, involving failure of a safety component of radiography equipment shall include the information specified in subsection (2) of this section.

(4) A licensee shall notify the cabinet if conducting radiographic operations or storing radioactive material at a location not listed on the license for a period in excess of 180 days in a calendar year.

Section 25. Incorporation by Reference. (1) The American National Standard Institute (ANSI) N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography", published in NBS Handbook 136, issued January 1981, is incorporated by reference.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2014

FILED WITH LRC: September 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes requirements for the conduct of industrial radiography operations in Kentucky.

(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:100 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will clarify regulatory requirements for industrial radiographers and their assistants.

(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 corrects an errant reference.

(b) The necessity of the amendment to this administrative regulation: To ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment updates the requirement for measuring radioactivity to conform to federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make the federal and state regulations consistent with one another thus making it easier to enforce compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately eleven (11) industrial radiographers licensed by the Kentucky Radiation Health Branch who actively conduct business in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action by the regulated is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost of compliance is involved. They are already in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have increased assurance of regulatory compliance with both federal and state regulations.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

General funds are used to support this program. No fund increase is required by this regulation amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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? No state or local entities will be impacted by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:100 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 regulation will generate no revenue for the state or local government during its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate no revenue in subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? This amendment will not increase program cost the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase program cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, 10 C.F.R. 34, 71, 21 C.F.R. 1020.40

2. State compliance standards. This administrative regulation provides requirements for licensees and registrants conducting industrial radiography.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

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. There are no different, stricter or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:142. Wire line service operations.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 39

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 C.F.R. 39

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration, and subsurface tracer studies.

Section 1. Agreement with Well Owner or Operator. (1) A licensee shall not perform a wire line service operation with a sealed source in a well or well-bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator or[,] well or land owner[~~, or drilling contractor~~] that:

(a) If a sealed source is lodged downhole, a reasonable effort at recovery shall be made;

(b) If a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;

(c) A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;

(d) The radiation monitoring required in Section 24[~~14~~] of this administrative regulation shall be performed;

(e) If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and

(f) If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 27[~~23~~] of this administrative regulation shall be met.

(2) The licensee shall retain a copy of the written agreement with the well operator or[,] well or land owner[~~, or drilling contractor~~] for three (3) years after completion of the well logging operations.

Section 2. Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in a manner that the requirements of 902 KAR 100:019 and 100:070 shall be met.

Section 3. Storage Precautions. (1) Sources of radiation, except accelerators, shall be provided with a lockable storage or transport container.

(2) The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(3) Sources of radiation shall be stored in a manner that shall minimize the danger from explosion or fire.

Section 4. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 5. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments, capable of detecting beta and gamma radiation, at each field station and temporary jobsite to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019.

(2)(a) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) millirem (.001 mSv) per hour through at least fifty (50) millirem (0.5 mSv) per hour.

(b) The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee shall own the instruments or have a procedure to obtain them quickly from a second party.

(3) The licensee shall have each[~~A~~] radiation survey instrument required by subsection (1) and (2) of this section[~~shall be~~] calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) So that accuracy within plus or minus twenty (20) percent of the true radiation level shall be demonstrated on each scale.

(4) Records of calibration shall be maintained for a period of at least three (3)[~~two (2)~~] years after the date of calibration for inspection by the cabinet.

Section 6. Leak Testing of Sealed Sources. (1) A licensee who uses a sealed source of radioactive material shall have the source tested for leakage as specified in this section. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the cabinet.

(2) Method of Testing.

(a) The wipe of a sealed source shall be performed using a leak test kit or method approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;

(b) The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate;

(c) The wipe sample shall be analyzed for radioactive contamination; and

(d) The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, as established in 10 C.F.R. Part 39.35.

(3) Test Frequency.

(a) Each sealed source, except an Energy Compensation Source (ECS), shall be tested at intervals not to exceed six (6) months;

(b) In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.

(4)(a) Each ECS, not exempted by subsection (7) of this section, shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made with the three (3) years before the transfer, the ECS shall not be used until tested.

(5) Removal from service:

(a) If the test conducted under subsections (1) and (2) of this section reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee authorized to perform these functions;

(b) The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee that is authorized to perform these functions.

(6) The licensee shall submit a report to the cabinet within five (5) days of receiving the test results, and the report shall describe the equipment involved in the leak, the test results, contamination that resulted from the leaking source, and the corrective actions taken up to the time that report is made.

(7) The following sealed sources shall be exempt from the periodic leak test requirements in subsections (1) through (5) of this section:

(a) Hydrogen – 3 (tritium) sources;

(b) Sources containing radioactive material with a half-life of thirty (30) days or less;

(c) Sealed sources containing radioactive material in gaseous form;

(d) Sources of beta- or gamma-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less; and

(e) Sources of alpha- or neutron-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sources of radiation received or possessed by the licensee or registrant.

(2) Records of inventories shall be maintained for at least two (2) years from the date of the inventory for inspection by the cabinet and shall include:

(a) The quantities and kinds of sources of radiation;

(b) The location where sources of radiation are assigned;

(c) The date of the inventory; and

(d) The name of the individual conducting the inventory.

Section 8. Utilization Records. A licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for at least two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the logging supervisor responsible for the radioactive material and identity of logging assistant present;

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 9. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction;

(b) Contain radioactive material whose chemical and physical form shall be as insoluble and nondispersible as practicable; and

(c) Meets the requirements of paragraphs (2), (3), and (4) of this section.

(2) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source in well logging applications if it meets the requirements of USASI N5.10-1968, Classification of Sealed Radioactive Sources, or the requirements in subsections (3) or (4) of this section.

(3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources – Classification.

(4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a) Temperature. The test source shall be held at minus forty (40) degrees Centigrade for twenty (20) minutes, 600 degrees Centigrade for one (1) hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Centigrade to

twenty (20) degrees Centigrade within fifteen (15) seconds;

(b) Impact test. A five (5) kilogram steel hammer, two and five-tenths (2.5) centimeters in diameter, shall be dropped from a height of one (1) meter onto the test source;

(c) Vibration test. The test source shall be subject to a vibration from twenty-five (25) Hz to 500 Hz at five (5) g amplitude for thirty (30) minutes;

(d) Puncture test. A one (1) gram hammer and pin, three-tenths (0.3) centimeter in diameter, shall be dropped from a height of one (1) meter unto the test source.

(e) Pressure Test. The test source shall be subject to an external pressure of 1.695×10^7 pascals (24,600 pounds per square inch absolute).

(5) The requirements in subsections (1) through (4) of this section shall not apply to sealed sources that contain radioactive material in gaseous form.

(6) The requirements in subsections (1) through (4) of this section shall not apply to ECS sources, which shall be registered with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.

(7) Certification documents shall be maintained for inspection by the cabinet for a period of at least two (2) years after source disposal.

(8) For sources abandoned downhole, certification documents shall be maintained until their disposal is authorized by the cabinet.

Section 10. Labeling. (1) A source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label that has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.

(2) This labeling shall be on the smallest component, for example, source, source holder, or logging tool, that is transported as a separate piece of equipment.

(3) A transport container shall have permanently attached to it a durable legible and clearly visible label that has, at a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 11. Inspection and Maintenance. (1) A licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.

(2) Records of inspection and maintenance shall be maintained for a period of at least two (2) years for inspection by the cabinet.

(3) If an inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(4) The repair, opening, or other modification of a sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.

Section 12. Training Requirements. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor until the individual has:

(a) Completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission covering the subjects outlined in Section 28 of this administrative regulation and shall have demonstrated an understanding of the subjects;

(b) Received copies of and demonstrated an understanding of the following:

1. The requirements contained in this administrative regulation;

2. Provisions of 902 KAR Chapter 100;

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating and emergency procedures;

(c) Completed on-the-job training and demonstrated competence in the use of sources of radiation, related handling tools, and radiation survey instruments that shall be employed in his assignment; and

(d) Demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.

(2) A licensee or registrant shall not permit an individual to act as a logging assistant until the individual has:

(a) Read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation and other applicable provisions of 902 KAR Chapter 100 and shall have demonstrated understanding of the subjects;

(b) Demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that will be employed in his assignment; and

(c) Demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.

(3) A licensee or registrant shall maintain employee training records for inspection by the cabinet for at least two (2) years following termination of employment.

Section 13. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed so that an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;

(4) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination;

(5) Methods and occasions for locking and securing sources of radiation;

(6) Personnel monitoring and the use of personnel monitoring equipment;

(7) Transportation to temporary job sites and field stations, including:

(a) Packaging of sources of radiation in the vehicles;

(b) Placarding of vehicles, if needed; and

(c) Physically securing sources of radiation during transportation to prevent accidental loss, tampering, or unauthorized removal;

(8) Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material;

(9) The procedure for notifying proper personnel in the event of an accident;

(10) Maintenance of records, including records generated by logging personnel at temporary jobsites;

(11) The inspection of sealed sources;

(12) The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;

(13) The procedures that shall be followed in the event a sealed source is lodged downhole;

(14) Picking up, receiving, and opening packages containing radioactive material;

(15) Decontamination of the environment, equipment, and personnel if tracers are used; and

(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:

(a) Prevent the spread of contamination;

(b) Minimize inhalation and ingestion of radioactive material; and

(c) Obtain suitable radiation survey instruments as required by Section 5 of this administrative regulation.

Section 14. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless the individual wears, at all times during well service operations utilizing sources of radiation, a personal dosimeter that is processed and evaluated by an accredited NVLAP processor.

(2) A personal dosimeter shall be assigned to and worn by only one (1) individual.

(3) Film badges shall be replaced monthly and other personal dosimeters replaced at least quarterly.

(4) After replacement, a personal dosimeter shall be promptly processed.

(5) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes disposal.

Section 15. Security. During logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 16. Handling Tools. The licensee shall provide and require the use of tools that shall assure remote handling of sealed sources other than low activity calibration sources.

Section 17. Tracer Studies. (1) Protective gloves and other appropriate protective clothing shall be used by personnel handling radioactive tracer material.

(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.

(3) A licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 18. Uranium Sinker Bars. The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION – RADIOACTIVE – DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

Section 19. Energy Compensation Source (ECS). (1) The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of radioactive material not exceeding 100 microcuries (3.7 MBq).

(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Sections 6, 7, and 8.

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the energy compensation source is only subject to the requirements of Sections 1, 6, 7, 8, 20, and 27[~~25~~].

Section 20. Use of a Sealed Source in a Well Without a Surface Casing. A licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure, approved by the Cabinet, for reducing the probability of the source becoming lodged in the well.

Section 21. Particle Accelerators. A licensee or registrant shall not permit above ground testing of particle accelerators if the testing will result in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be met.

Section 22. Tritium Neutron Generator Target Source. (1) Use of a tritium neutron generator target source, containing quantities not exceeding thirty (30) curies (1,110 GBq) and in a well with a surface casing to protect fresh water aquifers shall be established in this administrative regulation, except Sections 1, 9, and 27.

(2) Use of a tritium neutron generator target source, containing quantities exceeding thirty (30) curies (1,110 GBq) or in a well without a surface casing to protect fresh water aquifers shall be established in this administrative regulation, except Section 9 of this administrative regulation.

Section 23. Radiation Surveys. (1) A radiation survey shall be made and recorded for each area where radioactive materials are stored and used.

(2) A radiation survey shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.

(3) Each survey shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(4) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.

(5) A radiation survey shall be made and recorded at the job site or well head for tracer operations, except for those using hydrogen-3, carbon-14, and sulfur-35.

(6) Each survey shall include radiation levels prior to and after the operation.

(7) Records required pursuant to this section shall include:

(a) The dates;

(b) The identification of the individual making the survey;

(c) Identification of survey instrument used; and

(d) An exact description of the location of the survey.

(8) Each survey record shall be maintained for inspection by the cabinet for at least two (2) years after completion of the survey.

Section 24. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.

(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.

(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if present, to check for contamination resulting from damage to the sealed source.

Section 25. Records Required at Field Stations. A licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:

(1) Appropriate license or certificate of registration;

(2) Operating and emergency procedures;

(3) A copy of 902 KAR 100:019, 100:142, and 100:165;

(4) Survey records required pursuant to Section 23 of this administrative regulation;

(5) Quarterly inventories required pursuant to Section 7 of this administrative regulation;

(6) Utilization records required pursuant to Section 8 of this administrative regulation;

(7) Records of inspection and maintenance required pursuant to Section 11 of this administrative regulation;

(8) Records of the latest survey instrument calibration pursuant to Section 5 of this administrative regulation;

(9) Records of the latest leak test results pursuant to Section 6 of this administrative regulation; and

(10) Training records required by Section 12 of this administrative regulation.

Section 26. Records Required at Temporary Job Sites. (1) A licensee or registrant conducting a well service operation at a temporary job site shall have the following records available at that site for inspection by the cabinet:

(a) Operating and emergency procedures;

(b) Survey records required pursuant to Section 23 of this administrative regulation for the period of operation at the site;

(c) Evidence of current calibration for the radiation survey instruments in use at the site; and

(d) The shipping papers for the transportation of radioactive materials.

(2) In addition to the record requirements of this section, at each temporary job site where a well service operation is conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records available for inspection by the cabinet:

(a) Current leak test records for the sealed sources in use at the site;

(b) The appropriate license and certification of registration or equivalent document; and

(c) Shipping papers for the transport of radioactive material.

Section 27. Notification of Incidents and Lost Sources. (1) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall:

(a) Immediately notify by telephone the Cabinet for Health and Family Services, Radiation Health Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and

(b) Within thirty (30) days, notify by confirmatory letter to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621. The letter shall:

1. Designate the well or other location;

2. Describe the magnitude and extent of the escape of radioactive materials;

3. Assess the consequences of the rupture; and

4. Explain efforts planned or being taken to mitigate these consequences.

(2) The licensee shall notify the Cabinet for Health and Family Services, Radiation Health Branch of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39, and 40 and 100:040, Section 15.

(3) If a sealed source or device containing radioactive material is lodged in a well and it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:

(a) Notify the Cabinet for Health and Family Services, Radiation Health Branch, immediately by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday or at (800) 255-2587 at other hours of the circumstances that resulted in the inability to retrieve the source and obtain cabinet approval to implement abandonment procedures; or

(b) That the licensee implemented abandonment before receiving cabinet approval because the licensee believed there was an immediate threat to public health and safety.

(4) If it becomes apparent that efforts to recover the radioactive source shall not be successful, the licensee shall:

(a) Advise the well owner or well-operator of the requirements of this administrative regulation regarding abandonment and an appropriate method of abandonment, which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well, unless the mounting of the plaque is not practical;

(b) Either ensure that abandonment procedures are implemented within thirty (30) days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures; and

(c) File a written report on the abandonment with the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days after a sealed source has been classified as irretrievable. The report shall be sent to each appropriate state or federal agency that issued permits or approved of the drilling operation and shall include the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and seal the source in place;

5. A brief description of the attempted recovery effort;

6. Depth of the radioactive source;

7. Depth of the top of the cement plug;

8. Depth of the well;

9. The immediate threat to public health and safety justification for implementing abandonment if prior cabinet approval was not obtained in accordance with subsection (6) of this section;

10. Information such as a warning statement, contained on the permanent identification plaque; and

11. State and federal agencies receiving a copy of this report.

(5) If a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque mounted at the surface of the well. This plaque shall:

(a) Be constructed of long-lasting material, such as stainless steel, brass, bronze, or Monel. The size of the plaque shall be at least seven (7) inch, seventeen (17) cm square and one-eighth (1/8) inch (3mm) thick. Letter size of the word "Caution" shall be approximately twice the letter size of the rest of the information, for example, one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and

(b) Contain the following engraved information on its face:

1. The word "Caution;"

2. The radiation symbol (color not required);

3. The date of abandonment;

4. The name of the well operator or well owner;

5. The well name and well identification number or other designation;

6. The sealed source by radionuclide and quantity of activity;

7. The source depth and the depth to the top of the plug;

8. An appropriate warning, depending on the specific circumstances of an abandonment, for example, "Do not drill below plug depth;" or "Do not enlarge casing;" and

9. The words "Do not reenter hole before contacting Radiation Health Branch, Kentucky Cabinet for Health and Family Services."

(6) If the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source, the licensee shall:

(a) Immediately notify the Cabinet for Health and Family Services, Radiation Health Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and

(b) Confirm by letter, within thirty (30) days, to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(7) The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate consequences.

Section 28. Minimum Training Requirements for Logging Supervisors. Logging supervisors shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety:

(a) Characteristics of gamma, neutron, and x-radiation;

(b) Units of radiation dose (mrem);

(c) Quantity of radioactivity (curie);

(d) Significance of radiation dose:

1. Radiation protection standards; and
2. Biological effects of radiation dose;
(e) Levels of radiation from sources of radiation;
(f) Methods of controlling radiation dose:
1. Working time;
2. Working distance; and
3. Shielding; and
(g) Radiation safety practices including prevention of contamination and methods of decontamination;
(2) Radiation detection instrumentation to be used:
(a) Use of radiation survey instruments:
1. Operation;
2. Calibration; and
3. Limitations;
(b) Survey techniques; and
(c) Use of personnel monitoring equipment;
(3) Equipment to be used:
(a) Remote handling equipment;
(b) Sources of radiation;
(c) Storage and transport containers; and
(d) Operation and control of equipment;
(4) The requirements of 10 C.F.R. Part 39 and 902 KAR Chapter 100;
(5) The licensee's or registrant's written operating and emergency procedures;
(6) The licensee's or registrant's recordkeeping procedures; and
(7) Case histories of well logging accidents.

Section 29. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "USASI N5.10-1968, Classification of Sealed Radioactive Sources",[~~edition~~] 1968; and
(b) "ANSI/HPS N43.6-1997, "Sealed Radioactive Sources – Classification",[~~edition~~] 1997.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 11, 2014
FILED WITH LRC: September 15, 2014 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall, if requested, be held on October 21, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov .

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt McKinley (502) 564-3700 extension 4181
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes guidelines for wire line service operations.
(b) The necessity of this administrative regulation: The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:142 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the Kentucky Administrative Regulations to be consistent with the Code of Federal Regulations, it will ensure that Kentucky licensees are bound by the same requirements as their counterparts across the country.
(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 disallow work based on an agreement with a drilling contractor only, and updates requirements for the retention of calibration records and corrects various references
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure compliance with the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. This amendment puts the radiation program in compliance with federal regulations.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will make the federal and state regulations the same thus making enforcement easier.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will assist the nine (9) wire line service licensees in making Kentucky Administrative Regulations consistent with the Code of Federal Regulations.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be directly impacted by this amendment as they are already following federal standards.
(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 regulated entity to comply with this regulation because they are currently in compliance.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will be in conformance with both state and federal regulations as the regulations will be consistent.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to operate this program but no additional funds are required to implement this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE 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? No state or local government entities will be impacted by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. The U.S. Nuclear Regulatory Commission has amended its regulations. Therefore, Kentucky, as an agreement state, must amend 902 KAR 100:142 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The statutory authority for the promulgation of an administrative regulation relating to radioactive material is KRS 194A.030, 194A.050, 211.842 to 211.852. KRS 211.842(2) states the Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, non-ionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health and Family Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

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 revenues of state or local governments in the first year.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cause the program to incur any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cause the program to incur any additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended and 10 C.F.R. 39.

2. State compliance standards. This administrative regulation provides requirements for licensees who conduct well logging operations.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

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. There are no different, stricter or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 3:005. Coverage of physicians' services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152, 415.174, 415.184, 440.50, 447.26, 45 C.F.R. 160, 164, 42 U.S.C. 1320 - 1320d-8, 1396a(a)(19), (30)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

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 coverage provisions and requirements relating to physicians' services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Behavioral health practitioner under supervision" means an individual who is:

(a) A licensed psychological associate;

(b) A licensed professional counselor associate;

(c) A certified social worker;

(d) A marriage and family therapy associate;

(e) A licensed professional art therapist associate;

(f) A licensed assistant behavior analyst;

(g) A physician assistant; or

(h) A certified alcohol and drug counselor.

(3) "Common practice" means an arrangement through which a physician assistant administers health care services under the supervision of a physician via a supervisory relationship that has been approved by the Kentucky Board of Medical Licensure.

(4)[~~(3)~~] "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(5)[~~(4)~~] "Department" means the Department for Medicaid Services or its designee.

(6)[~~(5)~~] "Designated controlled substance provider" means the provider designated as a lock-in recipient's controlled substance prescriber:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(7)[~~(6)~~] "Designated primary care provider" means the provider

designated as a lock-in recipient's primary care provider:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(8)[~~(7)~~] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(9)[~~(8)~~] "Early and periodic screening and diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(10)[~~(9)~~] "Emergency care" means:

(a) Covered inpatient or outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(11)[~~(10)~~] "Enrollee" means a recipient who is enrolled with a managed care organization.

(12)[~~(11)~~] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13)[~~(12)~~] "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(14)[~~(13)~~] "Graduate medical education program" or "GME Program" means:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b).

(15)[~~(14)~~] "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(16)[~~(15)~~] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(17)[~~(16)~~] "Lock-in recipient" means:

(a) A recipient enrolled in the lock-in program in accordance with 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.

(18)[~~(17)~~] "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the APRN's provider number.

(19)[~~(18)~~] "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(20)[~~(19)~~] "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.

(21)[~~(20)~~] "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(22)[~~(21)~~] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23)[~~(22)~~] "Medical resident" means:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(24)[~~(23)~~] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(25)[~~(24)~~] "Non-Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient;

(b) The Medicaid Program is not the payer for the service; and

(c) The recipient is liable for payment to the provider for the service.

(26)[~~(25)~~] "Other licensed medical professional" means a health care provider:

(a) Other than a physician, physician assistant, advanced practice registered nurse, certified registered nurse anesthetist, nurse midwife, or registered nurse; and

(b) Who has been approved to practice a medical specialty by the appropriate licensure board.

(27)[~~(26)~~] "Other provider preventable condition" is defined in 42 C.F.R. 447.26(b).

(28)[~~(27)~~] "Physician assistant" is defined in KRS 311.840(3).

(29)[~~(28)~~] "Physician injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not typically self-administered;

(b) Is not excluded as a noncovered immunization or vaccine;

(c) Requires special handling, storage, shipping, dosing, or administration; and

(d) Is a rebatable drug.

(30)[~~(29)~~] "Podiatrist" is defined by KRS 205.510(12).

(31)[~~(30)~~] "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(32)[~~(31)~~] "Recipient" is defined by KRS 205.8451(9).

(33)[~~(32)~~] "Screening" means the evaluation of a recipient by a physician to determine:

(a) If a disease or medical condition is present; and

(b) If further evaluation, diagnostic testing, or treatment is needed.

(34)[~~(33)~~] "Supervising physician" is defined in KRS 311.840(4).

(35)[~~(34)~~] "Supervision" is defined in KRS 311.840(6).

(36)[~~(35)~~] "Timely filing" means receipt of a Medicaid claim by the department:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(37)[~~(36)~~] "Unlisted procedure or service" means a procedure or service:

(a) For which there is not a specific CPT code; and

(b) Which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1)(a) A participating physician shall:

1. Be licensed as a physician in the state in which the medical practice is located;

2. Comply with the:

a. Terms and conditions established in 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672;

b. Requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164;

3. Have the freedom to choose whether to provide services to a recipient; and

4. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any service to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis before the service begins; and

2.[~~Whether or not~~] The[~~:~~

~~a. Provider is a Medicaid-participating provider; or~~

~~b.~~] service is not a Medicaid-covered service.

(2) If a provider agrees to provide services to a recipient, the provider:

(a) Shall bill the department rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

(3)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(4)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(6) A provider shall comply with 45 C.F.R. Part 164.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a:

1. Medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

2. Locum tenens physician who provides direct physician contact;

3. Physician assistant in accordance with Section 7 of this administrative regulation; or

4. Locum tenens APRN who provides direct APRN contact;

(b) A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(c) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(d) A sleep disorder service; or

(e) A telehealth consultation provided in accordance with 907 KAR 3:170.

(3) A service provided by an other licensed medical professional shall be covered if the other licensed medical professional is:

(a) Employed by the supervising physician; and

(b) Licensed in the state of practice.

(4) A sleep disorder service shall be covered if performed in:

(a) A hospital;

(b) A sleep laboratory if the sleep laboratory has documentation demonstrating that it complies with criteria approved by the:

1. American Sleep Disorders Association; or

2. American Academy of Sleep Medicine; or

(c) An independent diagnostic testing facility that:

1. Is supervised by a physician trained in analyzing and interpreting sleep disorder recordings; and

2. Has documentation demonstrating that it complies with criteria approved by the:

a. American Sleep Disorders Association; or

b. American Academy of Sleep Medicine.

Section 4. Service Limitations. (1) A covered service provided to a lock-in recipient shall be limited to a service provided by the lock-in recipient's designated primary care provider or designated controlled substance prescriber unless:

(a) The service represents emergency care; or

(b) The lock-in recipient has been referred to the provider by the lock-in recipient's designated primary care provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 11:034.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in a physician's office shall not be covered as a separate reimbursable service through the physicians' program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused, or inhaled drug or biological that:

1. Is not typically self-administered;

2. Is not excluded as a noncovered immunization or vaccine; and

3. Requires special handling, storage, shipping, dosing, or administration.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, shall be covered within the scope and limitations of 42 C.F.R. 441, Subpart E and Subpart F.

(6)(a) Except as provided in paragraph (b) of this subsection, coverage for a service designated as a psychiatry service CPT code and provided by a physician shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(b) Coverage for a service designated as a psychiatry service CPT code that is provided by a board certified or board eligible psychiatrist or by an advanced practice registered nurse with a specialty in psychiatry shall not be subject to the limits established in paragraph (a) of this subsection.

(c) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(d) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(7) An anesthesia service shall be covered if:

(a) Administered by:

1. An anesthesiologist who remains in attendance throughout the procedure; or

2. An individual who:

a. Is licensed in Kentucky to practice anesthesia;

b. Is licensed in Kentucky within his or her scope of practice; and

c. Remains in attendance throughout the procedure;

(b) Medically necessary; and

(c) Not provided as part of an all-inclusive CPT code.

(8) The following shall not be covered:

(a) An acupuncture service;

(b) An autopsy;

(c) A cast or splint application in excess of the limits established in 907 KAR 3:010;

(d) Except for therapeutic bandage lenses, contact lenses;

(e) A hysterectomy performed for the purpose of sterilization;

(f) Lasik surgery;

(g) Paternity testing;

(h) A procedure performed for cosmetic purposes only;

(i) A procedure performed to promote or improve fertility;

(j) Radial keratotomy;

(k) A thermogram;

(l) An experimental service which is not in accordance with current standards of medical practice;

(m) A service which does not meet the requirements established in Section 3(1) of this administrative regulation;

(n) Medical direction of an anesthesia service; or

(o) Medical assistance for an other provider preventable condition in accordance with 907 KAR 14:005.

Section 5. Prior Authorization Requirements for Recipients Who are Not Enrolled with a Managed Care Organization. (1) The following procedures for a recipient who is not enrolled with a managed care organization shall require prior authorization by the department:

(a) Magnetic resonance imaging;

(b) Magnetic resonance angiogram;

(c) Magnetic resonance spectroscopy;

(d) Positron emission tomography;

(e) Cineradiography or videoradiography;

(f) Xeroradiography;

(g) Ultrasound subsequent to second obstetric ultrasound;

(h) Myocardial imaging;

(i) Cardiac blood pool imaging;

(j) Radiopharmaceutical procedures;

(k) Gastric restrictive surgery or gastric bypass surgery;

(l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form; or

(n) A covered unlisted procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service;

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(4) A referring physician, a physician who wishes to provide a given service, a podiatrist, a chiropractor, or an advanced practice registered nurse:

(a) May request prior authorization from the department; and

(b) If requesting prior authorization, shall request prior authorization by:

1. Mailing or faxing:

a. A written request to the department with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

b. If applicable, any required federal consent forms; or

2. Submitting a request via the department's web-based portal with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation.

Section 6. Therapy Service Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(2) Physical therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(3) Occupational therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be approved if the additional service is determined to be medically necessary by:

(a) The department, if the recipient is not enrolled with a managed care organization; or

(b) Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 7. Physician Assistant Services. (1) Except for a service limitation specified in subsections (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and

(d) The physician assistant complies with:

1. KRS 311.840 to 311.862; and

2. Section 2(1)(b) of this administrative regulation.

(2) A same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(8) of this administrative regulation;

(b) An anesthesia service;
(c) An obstetrical delivery service; or
(d) A service provided in assistance of surgery.

Section 8. Behavioral Health Services Covered Pursuant to 907 KAR 15:010. The requirements and provisions established in 907 KAR 15:010 for a service covered pursuant to 907 KAR 15:010 shall apply if the service is provided by:
(1) A physician who is the billing provider;
(2) An APRN who works for a physician who is the billing provider; or
(3) A behavioral health practitioner under supervision who works for a physician who is the billing provider.

Section 9. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.
(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physicians' services program.

Section 10.[~~9.~~] Third Party Liability. A provider shall comply with KRS 205.622.

Section 11.[~~10.~~] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.
(2) A provider that chooses to use electronic signatures shall:
(a) Develop and implement a written security policy that shall:
1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form that shall:
1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
(c) Provide the department, immediately upon request, with:
1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 12.[~~11.~~] Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 13.[~~12.~~] Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 14.[~~13.~~] Appeal Rights. An appeal of a department decision regarding:
(1) A Medicaid recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or
(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 4, 2014
FILED WITH LRC: August 20, 2014 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding physician services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage provisions and requirements regarding physician services.
(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 the Medicaid program coverage provisions and requirements regarding physician services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Medicaid program coverage provisions and requirements regarding physician services.
(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 eliminate the option for a Medicaid-enrolled provider to provide Medicaid-covered services to a Medicaid recipient on the side (cash only basis apart from the Medicaid program) and clarify that the requirements established in DMS's independent behavioral health services administrative regulation (907 KAR 15:010) apply to such services provided by a physician, advanced practice registered nurse working for a physician, or a behavioral health practitioner under supervision working for a physician.
(b) The necessity of the amendment to this administrative regulation: The amendment regarding a non-Medicaid basis corrects an error that was overlooked in the internal review of the original administrative regulation. This non-Medicaid basis amendment is necessary to protect the health, safety, and welfare of Medicaid recipients as a provider who provides Medicaid-covered services to a Medicaid recipient apart from the Medicaid umbrella may circumvent the requirements (including safeguards to protect recipients) in providing the service. Additionally, a provider could exploit the non-Medicaid basis option if the provider wanted a payment higher than that paid by the Medicaid Program for a given service by informing the Medicaid recipient that the provider would only offer the service if the recipient paid in cash. Recipients would be vulnerable to such exploitation. For example,

the "cash only" scenario has been used with suboxone and opioid dependence treatment for example. Suboxone is a drug used in tandem with opioid dependence treatment and some providers in Kentucky only offer the drug and treatment on a cash only (non-Medicaid/non-commercial insurer) basis and at a high price to individuals. An individual who is addicted to opioids is vulnerable to such exploitation. The amendment regarding the applicability of 907 KAR 15:010 (Coverage provisions and requirements regarding behavioral health services provided by independent providers) is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing the health, safety, and welfare of Medicaid recipients and by clarifying 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 enhancing the health, safety, and welfare of Medicaid recipients and by clarifying policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects physicians enrolled in the Medicaid program. Currently, there are over 14,000 individual physicians and over 1,700 physician group practices participating in the Medicaid Program. Medicaid recipients who receive services will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid providers who provided Medicaid-covered services to Medicaid recipients will have to bill the Medicaid Program for such services and not bill 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): As a result of the amendment Medicaid recipients will benefit by not being potential victims of Medicaid providers who could use the non-Medicaid basis option to exploit them.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional cost as a result of the amendment.

(b) On a continuing basis: DMS anticipates no additional cost as a result of the 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 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: 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. 42 U.S.C. 1396a(a)(10) and 42 U.S.C. 1396a(a)(19).

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."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10) mandates that a state's Medicaid Program cover physician services. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients.

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? This amendment will affect all physicians enrolled in the Medicaid program who are not reimbursed via a managed care organization.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment 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? DMS anticipates no additional cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost as a result of the amendment.

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.

NEW ADMINISTRATIVE REGULATIONS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

907 KAR 15:070. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a residential crisis stabilization unit that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A service shall be:

(a) Stated in the recipient's treatment plan; and

(b) Provided in accordance with the recipient's treatment plan.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a residential crisis stabilization unit shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be licensed as a residential crisis stabilization unit in accordance with 902 KAR 20:440;

(d) Comply with the requirements established in 902 KAR 20:440;

(e) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records;

(f) Be a community-based, residential program that offers an array of services including:

1. Screening;

2. Assessment;

3. Treatment planning;

4. Individual outpatient therapy;

5. Group outpatient therapy;

6. Psychiatric services;

7. Family outpatient therapy at the option of the residential crisis stabilization unit; or

8. Peer support at the option of the residential crisis stabilization unit;

(g) Provide services in order to:

1. Stabilize a crisis and divert an individual from a higher level of care;

2. Stabilize an individual and provide treatment for acute withdrawal, if applicable; and

3. Re-integrate an individual into the individual's community or other appropriate setting in a timely fashion;

(h) Not be part of a hospital;

(i) Be used when an individual:

1. Is experiencing a behavioral health crisis that cannot be safely accommodated within the individual's community; and

2. Needs overnight care that is not hospitalization;

(j) Not contain more than sixteen (16) beds;

(k) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate;

(l) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(m) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act;

(n) Have the capacity to employ staff authorized to provide treatment services in accordance with this section and to coordinate the provision of services among team members;

(o) Have the capacity to provide the full range of residential crisis stabilization services as stated in this paragraph and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;

(p) Have access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

(q) Have knowledgeable staff regarding substance use disorders.

(2) In accordance with 907 KAR 17:015, Section 3(3), a residential crisis stabilization unit which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 3. Covered Services. (1)(a) Except as specified in the requirements stated for a given service, the services covered may be provided for:

1. A mental health disorder;

2. A substance use disorder; or

3. Co-occurring mental health and substance use disorders.

(b) Residential crisis stabilization services shall be provided in a residential crisis stabilization unit.

(2) Residential crisis stabilization services shall include:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse; or

10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(c) Individual outpatient therapy or group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(d) Treatment planning provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(e) Psychiatric services provided by:

1. A psychiatrist; or

2. An APRN; or

(f) At the option of the residential crisis stabilization unit:

1. Family outpatient therapy provided by:

a. A licensed psychologist;

b. A licensed psychological practitioner;

c. A licensed clinical social worker;

d. A licensed professional clinical counselor;

e. A licensed professional art therapist;

f. A licensed marriage and family therapist;

g. A physician;

h. A psychiatrist;

i. An advanced practice registered nurse; or

j. A behavioral health practitioner under supervision except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed assistant behavior analyst; or

2. Peer support provided by a peer support specialist working under the supervision of an approved behavioral health service provider.

(3)(a) A screening shall:

1. Establish the need for a level of care evaluation to determine the most appropriate and least restrictive service to maintain the safety of the individual who may have a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment of the number and duration of risk factors including:

a. Imminent danger and availability of lethal weapons;

b. Verbalization of suicidal or homicidal risk;

c. Need of immediate medical attention;

d. Positive and negative coping strategies;

e. Lack of family or social supports;

f. Active psychiatric diagnosis; or

g. Current drug and alcohol use.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a mental health disorder, a substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance related disorder, a mental health disorder, or co-occurring related disorders;

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified crisis treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(d)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified crisis treatment plan;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance related disorder, a mental health disorder, or co-occurring related disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified crisis treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's crisis treatment plan;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(e)1. Treatment planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's

family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. Family outpatient therapy shall:

a. Be provided to promote:

(i) The health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, a mental health disorder, or co-occurring related disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(g)1. Peer support services shall:

a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer, parent, or family member:

(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and

(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Be coordinated within the context of a comprehensive, individualized treatment plan developed through a person-centered planning process;

g. Be identified in each recipient's treatment plan; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's treatment plan.

2. To provide peer support services, a residential crisis stabilization unit shall:

a. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 2:230, or 908 2:240;

b. Use an approved behavioral health services provider to supervise peer support specialists;

c. Have the capacity to coordinate the provision of services among team members; and

d. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(4)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the residential crisis stabilization unit;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(2) Residential crisis stabilization services shall not include:

(a) Room and board;

(b) Educational services;

(c) Vocational services;

(d) Job training services;

(e) Habilitation services;

(f) Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

(g) Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

(h) Recreational activities;

(i) Social activities; or

(j) Services required to be covered elsewhere in the state plan.

(3)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a residential crisis stabilization service from a community mental health center, the department shall not reimburse for the same service provided to the same recipient during the same time period by a residential crisis stabilization unit.

Section 6. Records Maintenance, Documentation, Protection, and Security. A residential crisis stabilization unit shall maintain a current health record for each recipient in accordance with 902 KAR 20:440.

Section 7. Medicaid Program Participation Compliance. (1) A residential crisis stabilization unit shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a residential crisis stabilization unit receives any duplicate payment or overpayment from the department, regardless of reason, the residential crisis stabilization unit shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the residential crisis stabilization unit accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the residential crisis stabilization unit.

(b)1. A residential crisis stabilization unit may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Residential crisis stabilization unit makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Residential crisis stabilization unit shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the residential crisis stabilization unit regarding the service.

(4)(a) A residential crisis stabilization unit attests by the residential crisis stabilization unit's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a residential crisis stabilization unit receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the residential crisis stabilization unit shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a residential crisis stabilization unit shall result in the suspension or termination of the residential crisis stabilization unit from Medicaid Program participation.

Section 8. Third Party Liability. A residential crisis stabilization unit shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A residential crisis stabilization unit that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the residential crisis stabilization unit's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the residential crisis stabilization unit's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 4, 2014

FILED WITH LRC: August 20, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units (RCSUs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:075E (Reimbursement provisions and requirements regarding behavioral health services provided by residential crisis stabilization units). To qualify as a provider, a residential crisis stabilization unit must be licensed in accordance with 902 KAR 20:440. RCSUs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services within the scope of residential crisis stabilization unit services includes a screening; an assessment; residential crisis stabilization services; individual outpatient therapy; group outpatient therapy; psychiatric services; treatment planning; peer support (optional); and family outpatient therapy (optional).

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services,

including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include residential crisis stabilization units) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(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 complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any entity that obtains a license as a residential crisis stabilization unit will be affected by this administrative regulation. Additionally, the following behavioral health professionals who are authorized to provide services in a residential crisis stabilization unit will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services provided by an RCSU will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as residential crisis stabilization units and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a residential crisis stabilization unit will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in the other authorized provider setting - community mental health centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(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 is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

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."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization

may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation 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? 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 is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars.00 associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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
Division of Policy and Operations
(New Administrative Regulation)

907 KAR 15:075. Reimbursement provisions and requirements for behavioral health services provided by residential crisis stabilization units.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a residential crisis stabilization unit that meets the provider participation requirements established in 907 KAR 15:070; and

(c) In accordance with the requirements established in 907 KAR 15:070; and

(3) Covered in accordance with 907 KAR 15:070.

Section 2. Reimbursement. (1) The department shall reimburse a per diem rate of $354 for services provided by a residential crisis stabilization unit to a recipient for a day.

(2) The reimbursement referenced in subsection (1) of this section shall represent total reimbursement for all services provided by a residential crisis stabilization unit to a recipient for the day.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a residential crisis stabilization service from a community mental health center, the department shall not reimburse for the same service provided to the same recipient during the same time period by a residential crisis stabilization unit.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:070; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 4, 2014

FILED WITH LRC: August 20, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing October 14, 2014, 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 October 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units (RCSUs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:070E (Coverage provisions and requirements regarding behavioral health services provided by residential crisis stabilization units). To qualify as a provider, a residential crisis stabilization unit must be licensed in accordance with 902 KAR 20:440. RCSUs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services within the scope of residential crisis stabilization unit services includes a screening; an assessment; residential crisis stabilization services; individual outpatient therapy; group outpatient therapy; psychiatric services; treatment planning; peer support (optional); and family outpatient therapy (optional). DMS will reimburse an all-inclusive daily rate of $354 to an RCSU per recipient receiving services from the RCSU on that day.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include residential crisis stabilization units) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(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 complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any entity that obtains a license as a residential crisis stabilization unit will be affected by this administrative regulation. Additionally, the following behavioral health professionals who are authorized to provide services in a residential crisis stabilization unit will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services provided by an RCSU will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as residential crisis stabilization units and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a residential crisis stabilization unit will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in the other authorized provider setting - community mental health centers. However, an actuary

with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(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 is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

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."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the 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 administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation 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? 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 is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in RCSUs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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 September 12, 2014

Call to Order and Roll Call

The September 2014 meeting of the Administrative Regulation Review Subcommittee was held on Friday, September 12, 2014, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the August 2014 meeting were approved.

Present were:

Members: Senators Sara Beth Gregory, Ernie Harris, and Alice Forgy Kerr; and Representatives Robert Damron, Jimmie Lee, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Ange Bertholf, and Betsy Cupp.

Guests: Alicia Sneed, Legal Services; Michael Burleson, Board of Pharmacy; Ronnie Harris, Real Estate Commission; Clint Quarles, Department of Agriculture; Dana Todd, Justice and Public Safety Cabinet; LaShana Harris, LaDonna Koebel, Kris Mann, Kevin Warform, Department of Juvenile Justice; Todd Shipp, Department of Transportation; Robert Curry, Brian Gupton, Rosemary Holbrook, Clay Lamb, Sarah Levy, Michelle McElmurray, Commission on Proprietary Education; Freddie Higdon, Steve Humphress, Alcoholic Beverage Control; Stephanie Bell, Jeff Derouen, Daniel Hinton, Ann Ramser, Public Service Commission; Diona Mullins, Office of Health Policy; Julie Brooks, Paula Goff, Allyson Taylor, Department of Public Health; Stuart Owen, Department of Medicaid Services; Victoria Elridge, Phyllis Sosa, Department for Aging and Independent Living.

The Administrative Regulation Review Subcommittee met on Friday, September 12, 2014, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Alternative Routes to Certification

16 KAR 9:080. University-based alternative certification program. Alicia Sneed, director of legal services, represented the board.

In response to questions by Co-Chair Harris, Ms. Sneed stated that the alternative certification program was established for people who do not have a teaching certificate but who have expertise in specialized fields and want to teach in grades P – 12.

A motion was made and seconded to approve the following amendments: (1) To amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Section 12 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:030. License transfer. Michael Burleson, executive director, represented the board.

In response to questions by Co-Chair Harris, Mr. Burleson stated that this administrative regulation established that an applicant seeking licensure in Kentucky by reciprocity from another state may apply for licensure as early as the score transfer, which may be up to ninety (90) days after the examination. The applicant no longer had to wait one (1) year from the date of license by another state pharmacy board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:040. Registration of pharmacist interns.

In response to a question by Co-Chair Harris, Mr. Burleson stated that, if a licensee was charged with an offense, the board would be notified and begin an investigative procedure. Action was not taken until the procedure ran its full course.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 7 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Commission: Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 11. Ronnie Harris, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:105. Advertising listed property; advertising public information about specific property; when consent and authorization of owner or principal broker is required.

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 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:121. Improper conduct.

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.

DEPARTMENT OF AGRICULTURE: Office of State Veterinarian: Division of Animal Health: Livestock Sanitation

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids. Clint Quarles, staff attorney, represented the division.

In response to a question by Co-Chair Harris, Mr. Quarles stated that Kentucky was not currently experiencing agricultural problems pertaining to chronic wasting disease; however, the division wanted to stay ahead of the issue. Kentucky was the first state federally approved for its monitoring program regarding chronic wasting disease.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Sections 3, 4, 11, and 12 to update citations; (3) to amend Section 3 to clarify that inventories shall be conducted by the owner with a representative from the state veterinarian's office; and (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council: Council

503 KAR 1:060. Definitions for 503 KAR Chapter 1. Dana Todd, assistant general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to update statutory citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

503 KAR 1:120. Professional development in-service training: graduation requirements; recognized courses; records.

In response to questions by Co-Chair Harris, Ms. Todd stated that the council had achieved compliance with the previous limit of twenty (20) percent excused absences from training; however, the council wanted to ensure rigorous training by reducing the limit of excused absences to ten (10) percent. The training was typically a forty (40) hour course.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 4 to update citations; and (2) to amend Sections 2 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Commercial Driver's License

601 KAR 11:030. Restrictions and endorsements on commercial driver's licenses. Todd Shipp, staff attorney, represented the division.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Commission on Proprietary Education: Commission

791 KAR 1:010. Applications, permits and renewals. Robert Curry, acting executive director; Clay Lamb, staff attorney; and Rosemary Holbrook, staff attorney, represented the commission.

In response to questions by Co-Chair Harris, Ms. Lamb stated that these administrative regulations required that advertisements regarding job placement rates include jobs within the field of study. The commission was raising fees because currently there were not enough funds for a permanent director, rent, attorney's fees, and other operating expenses. After the dissolution of the previous regulatory body and the creation of the commission, new responsibilities and recent audits also resulted in new expenses. The commission had been in place in the current form for two (2) years.

Co-Chair Harris stated that, because the commission was new and had only been in operation for two (2) years, it should proceed carefully to fulfill its new mandates.

Senator Gregory thanked the commission for working with commercial driver license schools and stakeholders to reach an agreement for these requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) 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 (3) to amend Sections 2 and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 1:020. Standards for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) 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 (3) to amend Sections 1, 2, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 1:025. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2, 3, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 1:030. Procedures for hearings.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 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.

791 KAR 1:035. Student protection fund.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) 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 (3) to amend Sections 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.

791 KAR 1:050. Application for license for commercial driver license training school.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) 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 (3) to amend Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) 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.222; and (3) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 1:091. Repeal of 791 KAR 1:090.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:230 & E. Extended hours supplemental licenses. Fred Higdon, commissioner; Steve Humphress, general counsel; and Christina Smith, legislative liaison, represented the department.

In response to questions by Co-Chair Harris, Mr. Humphress stated that these licenses were for Sunday only and were considered extended supplemental licenses, separate from local licenses. These licenses were for venues such as airports, convention centers, and historic sites.

In response to a question by Representative Lee, Mr. Humphress stated that small distillers may be licensed for sampling (tastings), depending on the designation of the county. For example, a license could not be issued to a wet city in a dry

county.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:351. Repeal of 804 KAR 4:070, 804 KAR 4:350, and 804 KAR 4:420.

804 KAR 4:400 & E. ABC basic application and renewal form incorporated by reference.

A motion was made and seconded to approve the following amendments: (1) to amend the Basic Application form to: (a) update citations; (b) replace references to paper registration forms with references to the new online registration process; and (c) have an applicant acknowledge that if a license transfer is not approved, the license surrender is void; and (2) to amend Section 2 to change the edition date of the revised basic application form. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:410 & E. Special applications and registration forms incorporated by reference.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend Sections 2 and 3 to replace the paper registration forms with an online registration process; (3) to amend the Out-of-State Producer/Supplier form and the Special Temporary License Application form to reference the new online registration process, to: (a) update references; and (b) make minor technical corrections; and (4) to amend Section 3 to change the edition date of the revised forms. Without objection, and with agreement of the agency, the amendments were approved.

Malt Beverages and Wine

804 KAR 14:010. Malt beverage and wine for personal use.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:001. Rules of procedure. Stephanie Bell, deputy executive director; Jeff Derouen, executive director; and Ann Ramser, staff attorney, represented the commission.

In response to questions by Co-Chair Harris, Mr. Derouen stated that, in 2013, the commission's authorizing statute was amended to require a water district requesting a fee increase to present testimony to its governing body. That requirement was subsequently deleted from the statute; therefore, this administrative regulation was amended accordingly. Ms. Bell stated that there was some ambiguity regarding how a fiscal court operated in conjunction with the commission, but the commission had the authority to prevent inappropriate fee increases. These administrative regulations provided for consistency with various facilities that provide notification electronically.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 11, 13, 16, 20, 21, and 23 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:011. Tariffs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend Sections 9 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:068. Purchased water adjustment for water districts and water associations.

807 KAR 5:069. Filing requirements and procedures for federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 2 to make technical corrections; and (2) to amend the RELATES TO paragraph to add statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:075. Treated sewage adjustment for water districts and water associations.

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

State Board on Electric Generation and Transmission Siting: Utilities

807 KAR 5:110. Board proceedings.

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Public Service Commission: Utilities

807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:070. Certificate of Need considerations for formal review. Diona Mullins, policy adviser, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Mullins stated that concerns had arisen during the public comment period regarding the formal review procedures. The cabinet revised the pertinent portions in the Amended After Comments version of this administrative regulation to revert to the original process requirements. There was a distinction between the certificate of need process and matters of compliance with the state health plan. The cabinet's intent was to keep those procedures clearly separate.

Representative Lee stated that the Kentucky Hospital Association was concerned about the initially proposed change because it deleted an important review step. Those concerned stakeholders seemed comfortable once the language was reverted in the Amended After Comments version.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS 13A.222. Without objection, and with agreement of the agency, the amendments were approved.

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers.

Department for Public Health: Division of Maternal and Child Health: Kentucky Early Intervention System

902 KAR 30:001. Definitions for 902 KAR Chapter 30. Julie Brooks, health program administrator; Paula Goff, branch manager; and Allyson Taylor, chief of staff, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Taylor stated that the revisions to these administrative regulations were precipitated by corresponding federal revisions. The First Steps

Program was not changing overall; however, minor changes were being made to various components of the program. The biggest change was an attempt to fortify efforts to locate children who would be eligible because there seemed to be many eligible children who were not being referred to the program. Additionally, requirements for providers were being updated, as were fees and the use of private insurance. The sliding scale for fees was being amended to raise the threshold and reduce rates. The maximum fee would be $400 per month. There was now an option to bill private insurance in lieu of the family fee if the applicant agreed.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:110. Point of Entry and service coordination.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:120. Evaluation and eligibility.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:130. Assessment, service planning, and assistive technology.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph 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.

902 KAR 30:150. Personnel qualifications.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:160. Covered services.

902 KAR 30:180. Procedural safeguards.

902 KAR 30:200. Coverage and payment for services.

Department for Medicaid Services: Division of Community Alternatives: Medicaid Services

907 KAR 1:835. Michelle P. waiver services and reimbursement. Stuart Owen, regulation coordinator, represented the department.

Representative Lee stated that he expected discussion of this program in the future because the CMS cap had been reached and there were many applicants still on the waiting list. The program was initially for those eighteen (18) years and older; however, currently approximately forty (40) percent of participants were under eighteen (18) years, some as young as five (5) months. The assessment process was developed for adults and often was insufficient for younger applicants. In response, Mr. Owen stated the cabinet's agreement and provided the example that the assessment included questions about if the participant needed help bathing. Any small child would need help bathing; therefore, the assessment was insufficient to determine if a small child should be eligible.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "certified psychologist" and "licensed psychological associate"; (2) to amend Section 6 to delete the enrollment provisions applicable to the program's initial enrollment in 2008; (3) to amend Section 10 to delete provisions requiring medication errors to be reported on a specific form; (4) to amend Section 11 to delete provisions that required removal of an individual from the Michelle P. Waiver Program waiting list after a documented attempt to contact or locate the individual or the individual's legal representative; and (5) to amend Sections 1 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:180. Homecare program for the elderly. Victoria Elridge, deputy commissioner, and Phyllis Sosa, staff assistant, represented the cabinet.

The following administrative regulations were deferred to the October 14, 2014, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Embalmers and Funeral Directors: Board

201 KAR 15:015. Per diem compensation of board members.

Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:080. Inactive and retired licensure status.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:300. Lead and copper.

401 KAR 8:700. Bottled water.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures: program services. LaDonna Koebel, assistant general counsel; Kris Mann, director; and Kevin Warform, manager, Quality Assurance Branch, represented the department. Bill Dolan, Protection and Advocacy, appeared in support of deferral of this administrative regulation.

In response to questions by Co-Chair Harris, Ms. Koebel stated that this administrative regulation was being substantively amended after the public comment period had ended because the accreditation association had revised national standards, and the department needed to revise requirements commensurately in order to maintain accreditation, which was to be considered in December 2014. The department notified RegWatch, Protection and Advocacy, and the Department for Public Advocacy of the initial proposed administrative regulation. The department then received public comments in response and further amended this administrative regulation in response to those comments. Afterward, internal staff and the Department for Public Advocacy noticed errors, both typographic and substantive. She stated that Subcommittee staff told her that the department had the option to correct those as part of the Amended After Comments version of this administrative regulation or as part of an amendment prior to Subcommittee consideration. The department notified those who had made the additional comments of the proposed agency amendment.

Co-Chair Harris stated that technical amendments, such as typographical corrections, were appropriate, but it was inappropriate to use an agency amendment to circumvent public notification requirements. It was a bad precedent to establish.

Additionally, he stated that he was concerned that the amendment deleted the requirement for parent notification if a child was put into restraint and was injured as a result. Ms. Koebel stated that the parent was notified if an injury required more than first aid.

In response to a question by Representative Turner, Ms. Koebel stated that the department was leery of deferring because this administrative regulation needed to be in place for the accreditation consideration in December 2014. Mr. Warform stated that the department had to have this administrative regulation in place by December, and also had to have the Standard Operating Procedures drafted and in place.

Representative Lee stated that even perceived changes of this magnitude needed the support of Protection and Advocacy. Mr. Dolan stated that Protection and Advocacy supported deferral of this administrative regulation in order to fully consider ramifications of any of these amendments.

A motion was made and seconded to request that the department defer consideration of this administrative regulation to the October 14 Subcommittee meeting. Ms. Koebel agreed to the deferral.

The proposed agency amendments included the following: (1) to amend policy 300 to clarify definitions; (2) to amend policy 300.1 to require annual rather than periodic assessment of the collective service needs of program youth; (3) to amend policy 300.2 to require admission letters to be mailed within seven rather than fourteen days to the committing judge; (4) to amend policy 301 to delete screening requirements that are contained in another policy; (5) to amend policy 301.1 to require the personal property inventory to be kept in the youth's individual client record and to delete the provision that allowed jewelry, including medical alert jewelry and religious medallions, to be worn upon approval; (6) to amend policy 301.2 to limit culturally sensitive hair care maintenance to when a licensed professional is available and to remove hair setting and maintenance of existing cornrows from the provided services; (7) to amend policy 310 to require facility mail, telephone, and visitation procedures to be reviewed annually; (8) to amend policy 315 to allow a facility to maintain a petty cash fund of $100 from the youth activity account fund for certain specified uses; (9) to amend policy 317 to except the Cadet Leadership and Education Program from the prohibition against using exercise as punishment and to limit the allowed exercise to the Exercise of the Day; (10) to amend policy 318.2 to clarify that when a juvenile signs a disciplinary report, he is verifying that he received the report and had an opportunity to respond rather than its accuracy; (11) to amend policy 319 to reduce the youth worker to juvenile staffing ratio at youth development centers from 1:16 to 1:12 and to reduce the staff ratio at group homes from 1:8 to 2:8 except when the youth are at school; (12) to amend policy 321 to delete the requirement that a youth's parent and juvenile service worker be notified of the use of restraints resulting in injury; (13) to amend policy 324 to delete the requirement that a youth's parent and juvenile service worker be notified within twenty-four hours if the youth was restrained; (14) to amend policy 325 to require strip search procedures to be reviewed rather than reviewed and authorized by the director of medical services and the superintendent; (15) to amend policy 327 to require documented notification of a parent within two hours of a juvenile's unexpected absence from a day treatment program, foster care placement, or private child care agency; (16) to amend policy 329 to delete procedures for weekly progress summaries; (17) to amend policy 332 to require notification of a furlough seven rather than ten days before the furlough; (18) to amend policy 344 to require youths in group homes to receive library services though local school districts; (19) to amend policy 345 to require a response to a dietary request within seven business days; (20) to amend policy 347 to renumber it as 347.1 and to align the procedures for various sentence credits for youthful offenders with KRS 197.045; (21) to amend policy 351 to align the parole hearing procedures for youthful offenders with KRS 439.340; (22) to amend policies 300, 300.2-303, 307, 308, 310, 315-318.1, 318.3, 319, 321-329, 331, 332, 334.2, 345, 347.1, and 351 to make minor clarifications and technical changes; and (23) to amend Section 1 to change the edition date for the revised policies.

TRANSPORTATION CABINET: Kentucky Bicycle and Bikeways Commission: Motorcycle and Bicycle Safety

601 KAR 14:020. Bicycle Safety standards.

Department of Highways: Division of Maintenance: Billboards

603 KAR 10:001. Definitions.

603 KAR 10:010. Static advertising devices.

603 KAR 10:020. Electronic advertising devices.

603 KAR 10:030. Removal of vegetation related to advertising devices.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:055. Certificate of Need forms.

900 KAR 6:075. Certificate of Need nonsubstantive review.

Department for Medicaid Services: Division of Policy and Operations: Hospital Service Coverage and Reimbursement

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

The Subcommittee adjourned at 2:10 p.m. until October 14, 2014 at 1 p.m.

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 NATURAL RESOURCES AND ENVIRONMENT
Meeting of September 4, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of September 4, 2013, having been referred to the Committee on September 3, 2014, pursuant to KRS 13A.290(6):

301 KAR 2:178

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 September 4, 2013 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 September 17, 2014

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 September 17, 2014, having been referred to the Committee on September 3, 2014, pursuant to KRS 13A.290(6):

900 KAR 6:030
900 KAR 6:125
902 KAR 55:045
902 KAR 55:090
902 KAR 95:040

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 17, 2014 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **D - 2**

The Locator Index lists all administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky* from July 2014 through June 2015. 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 40 are those administrative regulations that were originally published in VOLUME 40 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2014 Kentucky Administrative Regulations Service* was published.

KRS Index **D - 9**

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 41 of the *Administrative Register of Kentucky*.

Technical Amendment Index **D - 14**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index **D - 15**

The Subject Index is a general index of administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

Regulation Number	40 Ky.R. Page No.	Effective Date

VOLUME 40

The administrative regulations listed under VOLUME 40 are those administrative regulations that were originally published in Volume 40 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2014 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(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.

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.)

30 KAR 6:010E	2401	3-24-14
Replaced		See 41 Ky.R.
907 KAR 1:019E	1573	12-30-13
Replaced	2703	7-7-14
907 KAR 1:030E	1581	12-26-13
Replaced	2709	7-7-14
907 KAR 1:038E	1585	12-26-13
Replaced	2712	7-7-14
907 KAR 1:039E	1591	12-26-13
Replaced	2716	7-7-14
907 KAR 1:044E	1595	12-30-13
Replaced	2718	7-7-14
907 KAR 1:045E	1600	12-30-13
Replaced	2721	7-7-14
907 KAR 1:054E	1603	12-30-13
Replaced	2722	7-7-14
907 KAR 1:082E	1617	12-30-13
Replaced	2736	7-7-14
907 KAR 1:604E	1631	12-26-13
Replaced	2749	7-7-14
907 KAR 1:631E	1638	12-26-13
Replaced	2755	7-7-14
907 KAR 1:632E	1642	12-26-13
Replaced	2757	7-7-14
907 KAR 1:913E*(r)*	1646	12-26-13
907 KAR 3:005E	1648	12-26-13
Replaced	2759	7-7-14
907 KAR 8:005E	1655	12-26-13
Replaced	2765	7-7-14
907 KAR 8:010E	1657	
Reprinted	2095	12-26-13
Replaced	2765	7-7-14
907 KAR 8:015E	1660	12-26-13
Replaced	2766	7-7-14
907 KAR 8:020E	1662	12-26-13
Replaced	2767	7-7-14
907 KAR 8:025E	1665	12-26-13
Replaced	2768	7-7-14
907 KAR 8:030E	1668	12-26-13
Replaced	2769	7-7-14
907 KAR 8:035E	1671	12-26-13
Replaced	2770	7-7-14
907 KAR 10:014E	1673	12-26-13
Replaced	2771	7-7-14
907 KAR 12:020E	2109	2-6-14
Withdrawn		7-8-14
907 KAR 13:005E	1677	12-26-13
Replaced	2776	7-7-14
907 KAR 13:010E	1680	12-26-13
Replaced	2776	7-7-14
907 KAR 13:015E	1683	12-26-13
Replaced	2777	7-7-14
907 KAR 15:005E	1686	12-30-13
Replaced	2778	7-7-14
907 KAR 15:010E	1688	
Reprinted	2098	12-30-13
Replaced	2779	7-7-14
907 KAR 15:015E	1691	12-30-13
Replaced	2788	7-7-14
907 KAR 18:001E	2404	3-24-14
Replaced		See 41 Ky.R.
907 KAR 18:005E	2405	3-24-14
Replaced		See 41 Ky.R.
908 KAR 2:240E	2112	2-6-14
Replaced	2793	6-18-14
908 KAR 2:250E	2115	2-6-14
Replaced	2795	6-18-14

ORDINARY ADMINISTRATIVE REGULATIONS:

16 KAR 2:010		
Amended	2584	See 41 Ky.R.
16 KAR 4:060		
Amended	2581	See 41 Ky.R.
30 KAR 6:010	2646	See 41 Ky.R.
102 KAR 1:270		
Amended	2320	
As Amended	2675	7-7-14
102 KAR 1:320		
Amended	2321	
As Amended	2675	7-7-14
103 KAR 43:330		
Amended	2589	See 41 Ky.R.
109 KAR 15:020		
Amended	2194	
As Amended	2411	
As Amended	2678	6-25-14
201 KAR 3:025		
Amended	2325	7-7-14
201 KAR 3:090		
Amended	2326	
As Amended	2678	7-7-14
201 KAR 8:016	2385	
As Amended	2679	See 41 Ky.R.
201 KAR 8:532		
Amended	2328	
As Amended	2680	6-18-14
201 KAR 8:550		
Amended	2332	
201 KAR 8:562		
Amended	2338	
As Amended	2683	6-18-14
201 KAR 8:571		
Amended	2343	See 41 Ky.R.
201 KAR 9:300		
Repealed	2648	8-1-14
201 KAR 9:301*(r)*	2648	8-1-14
201 KAR 9:305		
Amended	2591	See 41 Ky.R.
201 KAR 9:307		
Amended	2592	See 41 Ky.R.
201 KAR 11:011		
Amended	2810	See 41 Ky.R.
201 KAR 11:105		
Amended	2811	See 41 Ky.R.
201 KAR 11:121		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date
Amended	2812	See 41 Ky.R.
201 KAR 14:085		
Amended	1863	See 41 Ky.R.
201 KAR 14:090		
Amended	2195	
As Amended	2686	7-7-14
201 KAR 14:115		
Amended	1866	
As Amended	2688	7-7-14
201 KAR 18:192		
Amended	2593	See 41 Ky.R.
201 KAR 20:056		
Amended	2596	See 41 Ky.R.
201 KAR 20:057		
Amended	2599	See 41 Ky.R.
201 KAR 20:161		
Amended	2602	See 41 Ky.R.
201 KAR 20:360		
Amended	2346	See 41 Ky.R.
201 KAR 20:370		
Amended	2605	See 41 Ky.R.
201 KAR 20:411		
Amended	2607	See 41 Ky.R.
201 KAR 20:450		
Amended	2609	See 41 Ky.R.
201 KAR 22:040		
Amended	2612	See 41 Ky.R.
201 KAR 22:160		
Amended	2227	See 41 Ky.R.
201 KAR 23:015		
Amended	2614	See 41 Ky.R.
201 KAR 34:060	2387	See 41 Ky.R.
201 KAR 42:035		
Amended	2202	
201 KAR 42:040		
Amended	2204	
201 KAR 42:060		
Amended	2206	
201 KAR 42:080		
Amended	2207	
201 KAR 42:110		
Amended	2210	
201 KAR 43:100	2649	See 41 Ky.R.
301 KAR 1:201		
Amended	2814	See 41 Ky.R.
301 KAR 2:132		
Amended	2349	
As Amended	2689	7-7-14
301 KAR 2:300		
Amended	2615	See 41 Ky.R.
500 KAR 8:030		
Amended	2219	
As Amended	2692	7-7-14
501 KAR 6:020		
Amended	2353	See 41 Ky.R.
501 KAR 6:110		
Amended	2819	See 41 Ky.R.
505 KAR 1:110		
Amended	2821	
600 KAR 6:040		
Amended	2355	7-1-14
601 KAR 1:230	2389	
As Amended	2694	7-1-14
601 KAR 14:020		
Amended	2223	
603 KAR 10:001	2019	
Amended	2453	
603 KAR 10:010		
Amended	1889	
Amended	2456	
603 KAR 10:020	2022	
Amended	2474	
603 KAR 10:030	2027	
Amended	2478	
702 KAR 7:065		
Amended	2618	See 41 Ky.R.
704 KAR 3:345		
Repealed	2925	8-11-14
704 KAR 3:346*(r)*	2925	8-11-14
704 KAR 3:370	2651	See 41 Ky.R.
739 KAR 2:090	2231	
Amended	2798	See 41 Ky.R.
803 KAR 2:300		
Amended	2823	9-5-14
803 KAR 2:306		
Amended	2825	9-5-14
803 KAR 2:308		
Amended	2828	9-5-14
803 KAR 2:309		
Amended	2830	9-5-14
803 KAR 2:314		
Amended	2832	9-5-14
803 KAR 2:317		
Amended	2834	9-5-14
803 KAR 2:318		
Amended	2837	9-5-14
803 KAR 2:400		
Amended	2839	See 41 Ky.R.
803 KAR 2:404		
Amended	2841	9-5-14
803 KAR 2:406		
Amended	2843	See 41 Ky.R.
803 KAR 2:412		
Amended	2845	See 41 Ky.R.
803 KAR 2:421		
Amended	2849	9-5-14
803 KAR 2:423		
Amended	2851	9-5-14
803 KAR 2:500		
Amended	2852	9-5-14
803 KAR 2:505		
Amended	2854	See 41 Ky.R.
803 KAR 2:550		
Repealed	2926	9-5-14
803 KAR 2:551*(r)*	2926	9-5-14
803 KAR 50:010		
Amended	1440	
As Amended	2695	7-7-14
804 KAR 1:051*(r)*	2391	7-7-14
804 KAR 1:100		
Amended	2857	9-5-14
804 KAR 9:050		
Amended	2358	
As Amended	2702	7-7-14
804 KAR 11:040	2927	
806 KAR 30:020		
Amended	2622	See 41 Ky.R.
806 KAR 38:100		
Amended	2623	See 41 Ky.R.
806 KAR 47:010		
Amended	2629	See 41 Ky.R.
815 KAR 7:120		
Amended	2630	8-1-14
815 KAR 7:125		
Amended	2633	8-1-14
900 KAR 6:055		
Amended	2858	
900 KAR 6:070		
Amended	2860	See 41 Ky.R.
900 KAR 6:075		

Regulation Number	40 Ky.R. Page No.	Effective Date
Amended	2862	
900 KAR 7:030		
Amended	2865	
902 KAR 30:001		
Amended	2869	See 41 Ky.R.
902 KAR 30:110		
Amended	2872	See 41 Ky.R.
902 KAR 30:120		
Amended	2876	See 41 Ky.R.
902 KAR 30:130		
Amended	2879	See 41 Ky.R.
902 KAR 30:150		
Amended	2883	See 41 Ky.R.
902 KAR 30:160		
Amended	2887	
902 KAR 30:180		
Amended	2889	See 41 Ky.R.
902 KAR 30:200		
Amended	2893	
902 KAR 55:045		
Amended	2635	
902 KAR 55:090		
Amended	2639	
907 KAR 1:019		
Amended	1933	
As Amended	2703	7-7-14
907 KAR 1:030		
Amended	1941	
As Amended	2709	7-7-14
907 KAR 1:038		
Amended	1945	
Amended	2481	
As Amended	2712	7-7-14
907 KAR 1:039		
Amended	1951	
As Amended	2716	7-7-14
907 KAR 1:044		
Amended	1955	
Amended	2487	
As Amended	2718	7-7-14
907 KAR 1:045		
Amended	1959	
Amended	2492	
As Amended	2721	7-7-14
907 KAR 1:054		
Amended	1962	
Amended	2495	
As Amended	2722	7-7-14
907 KAR 1:082		
Amended	1977	
Amended	2510	
As Amended	2736	7-7-14
907 KAR 1:604		
Amended	1991	
Amended	2524	
As Amended	2749	7-7-14
907 KAR 1:631		
Amended	1998	
Amended	2532	
As Amended	2755	7-7-14
907 KAR 1:632	2034	
Amended	2536	
As Amended	2757	7-7-14
907 KAR 1:835		
Amended	2899	See 41 Ky.R.
907 KAR 3:005		
Amended	2002	
Amended	2540	
As Amended	2759	7-7-14
907 KAR 8:005	2038	
As Amended	2765	7-7-14
907 KAR 8:010	2040	
As Amended	2765	7-7-14
907 KAR 8:015	2043	
Amended	2547	
As Amended	2766	7-7-14
907 KAR 8:020	2045	
As Amended	2767	7-7-14
907 KAR 8:025	2048	
Amended	2550	
As Amended	2768	7-7-14
907 KAR 8:030	2051	
As Amended	2769	7-7-14
907 KAR 8:035	2054	
Amended	2552	
As Amended	2770	7-7-14
907 KAR 10:014		
Amended	2009	
Amended	2554	
As Amended	2771	7-7-14
907 KAR 10:825		
Amended	1491	
Amended	2305	
907 KAR 13:005	2056	
As Amended	2776	7-7-14
907 KAR 13:010	2058	
Amended	2560	
As Amended	2776	7-7-14
907 KAR 13:015	2062	
As Amended	2777	7-7-14
907 KAR 15:005	2064	
Amended	2564	
As Amended	2778	7-7-14
907 KAR 15:010	2066	
Amended	2566	
As Amended	2779	7-7-14
907 KAR 15:015	2076	
Amended	2577	
As Amended	2788	7-7-14
907 KAR 18:001	2658	See 41 Ky.R.
907 KAR 18:005	2660	See 41 Ky.R.
908 KAR 2:240	2234	
As Amended	2793	6-18-14
908 KAR 2:250	2236	
As Amended	2795	6-18-14
910 KAR 2:040		
Amended	2361	
AmComments	2801	See 41 Ky.R.
921 KAR 1:430		
Amended	2642	8-1-14
921 KAR 2:055		
Amended	2369	See 41 Ky.R.
921 KAR 2:060		
Amended	2910	9-5-14
921 KAR 3:030		
Amended	2912	9-5-14
921 KAR 3:042		
Amended	2914	9-5-14
921 KAR 3:050		
Amended	2917	9-5-14
921 KAR 3:060		
Amended	2921	9-5-14
921 KAR 3:070		
Amended	2373	See 41 Ky.R.
922 KAR 1:320		
Amended	2377	See 41 Ky.R.
922 KAR 1:480		
Amended	2382	9-5-14

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 41

Regulation Number	40 Ky.R. Page No.	Effective Date
30 KAR 6:010E		See 40 Ky.R.
Replaced	10	8-1-14
31 KAR 4:130E	367	7-22-14
31 KAR 4:140E	372	7-22-14
31 KAR 5:010E	375	7-22-14
101 KAR 2:210	717	9-15-14
103 KAR 15:180E	4	6-5-14
301 KAR 2:225E	719	8-22-14
405 KAR 8:030E	379	8-6-14
405 KAR 8:040E	389	8-6-14
405 KAR 10:025E	235	6-30-14
804 KAR 4:230E	237	7-15-14
804 KAR 4:400E	239	7-15-14
804 KAR 4:410E	240	7-15-14
902 KAR 20:430E	242	7-15-14
902 KAR 20:440E	250	7-15-14
907 KAR 3:005E	721	8-20-14
907 KAR 15:005E	401	7-22-14
907 KAR 15:020E	404	7-22-14
907 KAR 15:025E	413	7-22-14
907 KAR 15:070E	727	8-20-14
907 KAR 15:075E	732	8-20-14
907 KAR 18:001E		See 40 Ky.R.
Replaced	44	8-1-14
907 KAR 18:005E		See 40 Ky.R.
Replaced	44	8-1-14
922 KAR 1:360E	417	8-1-14
922 KAR 2:160E	423	8-1-14
922 KAR 5:070E	432	7-23-14
922 KAR 5:120E	436	7-23-14

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	40 Ky.R. Page No.	Effective Date
11 KAR 3:100		
Amended	817	
11 KAR 5:001		
Amended	828	
11 KAR 5:033		
Amended	831	
11 KAR 5:034		
Amended	832	
11 KAR 5:170		
Amended	834	
11 KAR 8:030		
Amended	835	
11 KAR 15:060		
Amended	839	
11 KAR 16:001		
Amended	841	
11 KAR 16:010		
Amended	843	
16 KAR 2:010		See 40 Ky.R.
As Amended	8	8-1-14
16 KAR 2:120		
Amended	533	
16 KAR 4:060		See 40 Ky.R.
As Amended	256	9-5-14
16 KAR 9:080		
Amended	295	
As Amended	736	
30 KAR 6:010		See 40 Ky.R.
As Amended	10	8-1-14
31 KAR 3:030	669	
31 KAR 4:130		
Amended	536	
31 KAR 4:140		
Amended	541	
31 KAR 5:010		
Amended	544	
101 KAR 2:210		
Amended	845	
103 KAR 15:180		
Amended	85	
As Amended	439	
103 KAR 43:330		See 40 Ky.R.
As Amended	12	8-1-14
200 KAR 1:015	670	
201 KAR 1:190		
Amended	548	
201 KAR 2:030		
Amended	298	
As Amended	738	
201 KAR 2:040		
Amended	300	
As Amended	739	
201 KAR 5:055	672	
201 KAR 8:016		See 40 Ky.R.
As Amended	257	6-18-14
201 KAR 8:550		See 40 Ky.R.
Am Comments	56	9-5-14
201 KAR 8:571		See 40 Ky.R.
As Amended	257	9-5-14
201 KAR 9:305		See 40 Ky.R.
As Amended	12	8-1-14
201 KAR 9:307		See 40 Ky.R.
As Amended	13	8-1-14
201 KAR 11:011		See 40 Ky.R.
As Amended	740	
201 KAR 11:105		See 40 Ky.R
As Amended	741	
201 KAR 11:121		See 40 Ky.R.
As Amended	741	
201 KAR 14:085		See 40 Ky.R.
As Amended	13	8-1-14
201 KAR 15:015	336	
201 KAR 18:192		See 40 Ky.R.
As Amended	15	8-1-14
201 KAR 20:056		See 40 Ky.R.
As Amended	17	8-1-14
201 KAR 20:057		See 40 Ky.R.
As Amended	19	7-16-14
201 KAR 20:161		See 40 Ky.R.
As Amended	22	8-1-14
201 KAR 20:360		See 40 Ky.R.
As Amended	24	8-1-14
201 KAR 20:370		See 40 Ky.R.
As Amended	26	8-1-14
201 KAR 20:411		See 40 Ky.R.
As Amended	27	8-1-14
201 KAR 20:450		See 40 Ky.R.
As Amended	29	8-1-14
201 KAR 22:040		See 40 Ky.R.
As Amended	31	8-1-14

Regulation Number	40 Ky.R. Page No.	Effective Date
201 KAR 22:160		See 40 Ky.R.
As Amended	32	8-1-14
201 KAR 23:015		See 40 Ky.R.
As Amended	32	8-1-14
201 KAR 30:125		
Amended	552	
201 KAR 30:180		
Amended	553	
201 KAR 30:200		
Amended	556	
201 KAR 31:100	210	
As Amended	441	
201 KAR 32:035		
Amended	558	
201 KAR 33: 010		
Amended	560	
201 KAR 34:060		See 40 Ky.R.
As Amended	33	8-1-14
201 KAR 36:060		
Amended	302	
201 KAR 36:070		
Amended	305	
201 KAR 36:080	337	
201 KAR 37:010		
Amended	562	
201 KAR 40:020		
Recodified as 791 KAR 1:020		6-12-14
201 KAR 40:025		
Recodified as 791 KAR 1:025		6-12-14
201 KAR 40:027		
Recodified as 791 KAR 1:027		6-12-14
201 KAR 40:030		
Recodified as 791 KAR 1:030		6-12-14
201 KAR 40:035		
Recodified as 791 KAR 1:035		6-12-14
201 KAR 40:040		
Recodified as 791 KAR 1:040		6-12-14
201 KAR 40:050		
Recodified as 791 KAR 1:050		6-12-14
201 KAR 40:060		
Recodified as 791 KAR 1:060		6-12-14
201 KAR 40:070		
Recodified as 791 KAR 1:070		6-12-14
201 KAR 40:080		
Recodified as 791 KAR 1:080		6-12-14
201 KAR 40:090		
Recodified as 791 KAR 1:090		6-12-14
201 KAR 40:100		
Recodified as 791 KAR 1:100		6-12-14
201 KAR 40:150		
Recodified as 791 KAR 1:150		6-12-14
201 KAR 40:155		
Recodified as 791 KAR 1:155		6-12-14
201 KAR 40:160		
Recodified as 791 KAR 1:160		6-12-14
201 KAR 42:035		See 40 Ky.R.
As Amended	441	
201 KAR 42:040		See 40 Ky.R.
As Amended	442	
201 KAR 42:060		See 40 Ky.R.
As Amended	443	
201 KAR 42:080		See 40 Ky.R.
As Amended	444	
201 KAR 42:110		See 40 Ky.R.
As Amended	446	
201 KAR 44:090		
Amended	307	
Withdrawn		9-19-14
201 KAR 44:110		
Amended	308	
Withdrawn		9-19-14
201 KAR 44:120		
Amended	310	
Withdrawn		9-19-14
201 KAR 43:100		See 40 Ky.R.
As Amended	35	8-1-14
201 KAR 45:110		See 40 Ky.R.
Amended	88	
As Amended	447	
201 KAR 45:120		
Amended	89	
As Amended	448	
201 KAR 45:170	211	
As Amended	448	
201 KAR 45:180	213	
As Amended	449	
300 KAR 6:010		
Amended	847	
301 KAR 1:152		
Amended	854	
301 KAR 1:201		See 40 Ky.R.
As Amended	259	8-7-14
301 KAR 1:220		
Amended	856	
301 KAR 1:410		
Amended	564	
301 KAR 2:178		
Amended	91	
301 KAR 2:225		
Amended	859	
301 KAR 2:300		See 40 Ky.R.
As Amended	35	7-3-14
302 KAR 20:066		
Amended	311	
As Amended	743	
401 KAR 8:200		
Amended	316	
AmComments	807	
401 KAR 8:300		
Amended	318	
401 KAR 8:700		
Amended	320	
405 KAR 8:030		
Amended	567	
405 KAR 8:040		
Amended	578	
405 KAR 10:025	338	
500 KAR 4:011	214	
501 KAR 6:020		See 40 Ky.R.
As Amended	38	8-1-14
501 KAR 6:050		
Amended	862	
501 KAR 6:060		
Amended	324	
501 KAR 6:110		See 40 Ky.R.
As Amended	263	9-5-14
503 KAR 1:060		
Amended	326	
As Amended	747	
503 KAR 1:070		
Amended	590	
503 KAR 1:080		
Amended	591	
503 KAR 1:090		
Amended	593	
503 KAR 1:100		
Amended	595	
503 KAR 1:120		
Amended	327	
As Amended	747	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date
503 KAR 3:005		
Amended	97	
As Amended	449	
503 KAR 3:010		
Amended	98	
As Amended	450	
503 KAR 3:040		
Amended	104	
As Amended	454	
503 KAR 3:110		
Amended	108	
As Amended	458	
505 KAR 1:110		
AmComments	472	
601 KAR 11:030		
Amended	329	
702 KAR 1:160		
Amended	597	
702 KAR 7:065		See 40 Ky.R.
As Amended	39	8-1-14
702 KAR 7:140		
Amended	600	
703 KAR 5:122*(r)*	674	
703 KAR 5:260	675	
704 KAR 3:370		See 40 Ky.R.
AmComments	61	
As Amended	264	8-11-14
739 KAR 2:090		See 40 Ky.R.
As Amended	41	8-1-14
750 KAR 1:030	680	
791 KAR 1:010	215	
As Amended	748	
791 KAR 1:020		
Amended	113	
As Amended	750	
791 KAR 1:025		
Amended	118	
AmComments	473	
As Amended	754	
791 KAR 1:030		
Amended	121	
As Amended	756	
791 KAR 1:035		
Amended	123	
As Amended	758	
791 KAR 1:050		
Amended	125	
As Amended	758	
791 KAR 1:060		
Amended	127	
As Amended	759	
791 KAR 1:070		
Amended	129	
As Amended	760	
791 KAR 1:091	218	
803 KAR 2:400		See 40 Ky.R.
As Amended	271	9-5-14
803 KAR 2:406		See 40 Ky.R.
As Amended	271	9-5-14
803 KAR 2:412		See 40 Ky.R.
As Amended	271	9-5-14
803 KAR 2:505		See 40 Ky.R.
As Amended	274	9-5-14
804 KAR 4:230		
Amended	331	
As Amended	761	
804 KAR 4:351*(r)*	341	
804 KAR 4:400		
Amended	333	
As Amended	762	
804 KAR 4:410		
Amended	334	
As Amended	762	
804 KAR 10:030	682	
804 KAR 11:040		See 40 Ky.R.
As Amended	462	
804 KAR 14:010	342	
As Amended	763	
806 KAR 6:070		
Amended	864	
806 KAR 30:020		See 40 Ky.R.
As Amended	43	8-1-14
806 KAR 37:010		
Amended	602	
806 KAR 38:100		See 40 Ky.R.
As Amended	274	9-5-14
806 KAR 47:010		See 40 Ky.R.
As Amended	43	8-1-14
807 KAR 5:001		
Amended	131	
AmComments	476	
As Amended	763	
807 KAR 5:011		
Amended	143	
As Amended	775	
807 KAR 5:068		
Amended	148	
AmComments	489	
807 KAR 5:069		
Amended	150	
As Amended	779	
807 KAR 5:075		
Amended	153	
AmComments	492	
807 KAR 5:076		
Amended	156	
AmComments	494	
807 KAR 5:110		
Amended	160	
As Amended	780	
807 KAR 5:120		
Amended	164	
As Amended	782	
810 KAR 1:017		
Amended	610	
810 KAR 1:027		
Amended	612	
811 KAR 2:070		
Amended	616	
811 KAR 2:090		
Amended	621	
815 KAR 6:001	683	
815 KAR 6:010		
Amended	623	
815 KAR 6:030		
Amended	626	
815 KAR 6:040		
Amended	628	
815 KAR 6:080	685	
815 KAR 6:090	686	
815 KAR 6:100	689	
815 KAR 20:040		
Amended	166	
As Amended	463	
815 KAR 20:050		
Amended	167	
815 KAR 20:060		
Amended	169	
815 KAR 20:070		
Amended	172	

Regulation Number	40 Ky.R. Page No.	Effective Date
815 KAR 20:090		
Amended	175	
815 KAR 20:130		
Amended	179	
815 KAR 20:191		
Amended	183	
As Amended	463	
900 KAR 6:030		
Amended	190	
900 KAR 6:055		
AmComments	498	
900 KAR 6:060		
Amended	631	
900 KAR 6:065		
Amended	633	
900 KAR 6:070		
AmComments	500	
As Amended	783	
900 KAR 6:075		
AmComments	502	
900 KAR 6:125		
Amended	192	
900 KAR 7:030		
AmComments	505	
902 KAR 2:055		
Amended	637	
902 KAR 20:008		
Amended	194	
AmComments	809	
902 KAR 20:430	343	
902 KAR 20:440	351	
902 KAR 30:001		See 40 Ky.R.
As Amended	784	
902 KAR 30:110		See 40 Ky.R.
As Amended	786	
902 KAR 30:0120		See 40 Ky.R.
As Amended	788	
902 KAR 30:0130		See 40 Ky.R.
As Amended	790	
902 KAR 30:150		See 40 Ky.R.
AmComments	509	
As Amended	793	
902 KAR 30:180		See 40 Ky.R.
AmComments	513	
902 KAR 55:045		
AmComments	290	
902 KAR 95:040	219	
As Amended	469	
902 KAR 100:010		
Amended	867	
902 KAR 100:012		
Amended	882	
902 KAR 100:019		
Amended	885	
902 KAR 100:042		
Amended	897	
902 KAR 100:058		
Amended	907	
902 KAR 100:070		
Amended	914	
902 KAR 100:072		
Amended	921	
902 KAR 100:100		
Amended	945	
902 KAR 100:142		
Amended	953	
907 KAR 1:835		See 40 Ky.R.
AmComments	516	
As Amended	796	
907 KAR 3:005		
Amended	959	
907 KAR 3:111	223	
907 KAR 15:005		
Amended	639	
907 KAR 15:020	690	
907 KAR 15:025	700	
907 KAR 15:070	965	
907 KAR 15:075	970	
907 KAR 18:001		See 40 Ky.R.
As Amended	44	8-1-14
907 KAR 18:005		See 40 Ky.R.
As Amended	44	8-1-14
908 KAR 3:050		
Amended	642	
908 KAR 3:060		
Amended	644	
910 KAR 1:180		
Amended	200	
AmComments	527	
910 KAR 2:040		See 40 Ky.R.
As Amended	48	8-1-14
921 KAR 2:055		See 40 Ky.R.
AmComments	69	
As Amended	280	9-5-14
921 KAR 3:035		
Amended	205	
921 KAR 3:070		See 40 Ky.R.
AmComments	73	
As Amended	283	9-5-14
921 KAR 3:090		
Amended	647	
922 KAR 1:320		See 40 Ky.R.
AmComments	77	
As Amended	286	9-5-14
922 KAR 1:360		
Amended	650	
922 KAR 1:480		See 40 Ky.R.
AmComments	81	
922 KAR 2:160		
Amended	655	
922 KAR 5:070		
Amended	664	
922 KAR 5:120	703	

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.

KRS INDEX

KRS SECTION	REGULATION
13A.100	500 KAR 4:011
13A.190	902 KAR 20:043
	902 KAR 20:440
13B	900 KAR 7:030
	908 KAR 3:060
	922 KAR 1:360
	922 KAR 5:070
	922 KAR 5:120
13B.010-170	910 KAR 1:180
15.330	503 KAR 1:060
	503 KAR 1:070
	503 KAR 1:080
	503 KAR 1:090
	503 KAR 1:100
	503 KAR 1:120
15.380	503 KAR 3:110
15.3975	503 KAR 3:110
15.404	503 KAR 1:120
15.440	503 KAR 1:120
15.450	503 KAR 1:060
15.530	500 KAR 4:011
15.530-15.590	503 KAR 3:040
15.540	500 KAR 4:011
15.550	500 KAR 4:011
15.560	500 KAR 4:011
15.570	500 KAR 4:011
15A.070	503 KAR 3:005
	503 KAR 3:010
17.500	902 KAR 20:430
18A.030	101 KAR 2:210
18A.225	101 KAR 2:210
18A.2254	101 KAR 2:210
40.310	201 KAR 37:010
40.353	201 KAR 37:010
40.460	201 KAR 37:010
58.200	815 KAR 20:191
61.932	200 KAR 1:015
61.933	200 KAR 1:015
65.810	807 KAR 5:068
	807 KAR 5:075
61.870-884	807 KAR 5.001
	807 KAR 5:110
61.931-934	807 KAR 5:001
65.810	807 KAR 5.001
	807 KAR 5:068
	807 KAR 5:075
72.020	501 KAR 6:050
72.025	501 KAR 6:050
74	807 KAR 5.001
	807 KAR 5:068
	807 KAR 5:075
116.045	31 KAR 4:140
117.079	31 KAR 4:140
	31 KAR 5:010
117.085	31 KAR 4:130
	31 KAR 4:140
117.086	31 KAR 4:130
117A.030	31 KAR 4:130
117A.040	31 KAR 3:030
117A.050	31 KAR 4:140
	31 KAR 5:010
117A.060	31 KAR 4:140
	31 KAR 5:010
117A.080	31 KAR 4:130
117A.100	31 KAR 5:010
117A.120	31 KAR 4:130
117A.130	31 KAR 4:130
	31 KAR 5:010
117A.160	31 KAR 5:010
136.320	103 KAR 15:180
136.330	103 KAR 15:180
136.340	103 KAR 15:180
136.350	103 KAR 15:180
136.370	103 KAR 15:180
136.390	103 KAR 15:180
141.020	103 KAR 15:180
141.21	401 KAR 8:200
141.040	103 KAR 15:180
141.42	401 KAR 8:300
141.43	401 KAR 8:300
141.52	401 KAR 8:200
141.0401	103 KAR 15:180
141.050	103 KAR 15:180
141.63	401 KAR 8:200
141.80-141.91	401 KAR 8:300
141.154	401 KAR 8:300
141.432	103 KAR 15:180
141.433	103 KAR 15:180
141.434	103 KAR 15:180
141.444	201 KAR 37:010
150.010	301 KAR 1:152
	301 KAR 1:410
	301 KAR 2:178
150.170	301 KAR 1:152
	301 KAR 1:410
	301 KAR 2:178
150.175	301 KAR 1:152
	301 KAR 1:410
150.235	301 KAR 1:410
150.330	301 KAR 2:225
150.340	301 KAR 1:220
	301 KAR 2:178
	301 KAR 2:225
150.370	301 KAR 2:178
150.440	301 KAR 1:220
150.445	301 KAR 1:152
	301 KAR 1:220
	301 KAR 1:410
150.450	301 KAR 1:152
	301 KAR 1:220
150.470	301 KAR 1:220
150.603	301 KAR 2:225
150.620	301 KAR 1:410
150.720	302 KAR 20:066
150.990	301 KAR 1:152
	301 KAR 1:410
	301 KAR 2:178
156.111	16 KAR 9:080
156.160	702 KAR 1:160
156.501	702 KAR 1:160
156.502	702 KAR 1:160
157.320	702 KAR 7:140
157.350	702 KAR 7:140
157.390	16 KAR 2:120
157.618	750 KAR 1:030
158.035	702 KAR 1:160
	902 KAR 2:055
158.060	702 KAR 7:140
158.070	702 KAR 7:140
158.160	702 KAR 1:160
158.6451	703 KAR 5:122
158.6453	703 KAR 5:122
	703 KAR 5:260
158.6455	703 KAR 5:122
	703 KAR 5:260
158.782	703 KAR 5:122
	703 KAR 5:260
158.805	703 KAR 5:122
160	902 KAR 20:430
	902 KAR 20:440
160.345	16 KAR 9:080
160.346	703 KAR 5:122

KRS SECTION	REGULATION
	703 KAR 5:260
161.020	16 KAR 2:120
161.027	16 KAR 9:080
161.028	16 KAR 2:120
	16 KAR 9:080
161.030	16 KAR 2:120
	16 KAR 9:080
161.048	16 KAR 9:080
161.100	16 KAR 2:120
161.145	702 KAR 1:160
161.1211	16 KAR 2:120
161.1221	16 KAR 2:120
164	902 KAR 20:430
	902 KAR 20:440
164.518	11 KAR 16:001
	11 KAR 16:010
164.740	11 KAR 8:030
	11 KAR 16:001
164.740-164.785	11 KAR 5:001
164.744	11 KAR 3:100
	11 KAR 5:034
	11 KAR 8:030
164.748	11 KAR 3:100
	11 KAR 5:170
164.753	11 KAR 3:100
	11 KAR 5:033
	11 KAR 5:034
	11 KAR 5:170
	11 KAR 8:030
164.769	11 KAR 8:030
164.772	804 KAR 4:440
164.780	11 KAR 5:033
	11 KAR 5:170
164.785	11 KAR 5:033
	11 KAR 5:170
164.7535	11 KAR 5:034
	11 KAR 5:170
164.7871-164.7885	11 KAR 15:060
165.110	401 KAR 8:700
165A.310	791 KAR 1:020
	791 KAR 1:070
165A.330	791 KAR 1:020
	791 KAR 1:050
	791 KAR 1:060
	791 KAR 1:070
	791 KAR 1:090
165A.350	791 KAR 1:010
	791 KAR 1:025
	791 KAR 1:030
	791 KAR 1:070
	791 KAR 1:090
165A.360	791 KAR 1:010
	791 KAR 1:025
	791 KAR 1:030
	791 KAR 1:090
165A.370	791 KAR 1:020
	791 KAR 1:030
	791 KAR 1:060
	791 KAR 1:070
	791 KAR 1:090
165A.380	791 KAR 1:025
	791 KAR 1:070
165A.390	791 KAR 1:030
165A.450	791 KAR 1:035
	791 KAR 1:030
	791 KAR 1:050
165A.460	791 KAR 1:070
165A.465	791 KAR 1:050
	791 KAR 1:070
165A.470	791 KAR 1:050
	791 KAR 1:070
165A.475	791 KAR 1:050

KRS SECTION	REGULATION
	791 KAR 1:070
165A.480	791 KAR 1:050
	791 KAR 1:070
165A.485	791 KAR 1:060
	791 KAR 1:070
165A.490	791 KAR 1:090
165A.495	791 KAR 1:090
165A.510	791 KAR 1:060
	791 KAR 1:090
165A.990	791 KAR 1:030
	791 KAR 1:090
171.396	300 KAR 6:010
171.3961	300 KAR 6:010
171.397	300 KAR 6:010
186.162	201 KAR 37:010
186.168	201 KAR 37:010
194A.010	922 KAR 5:070
194A.025	907 KAR 15:005
194A.060	922 KAR 2:160
194A.700	910 KAR 1:180
196	501 KAR 6:050
	501 KAR 6:060
197	501 KAR 6:050
	501 KAR 6:060
198.260	902 KAR 20:430
198B.700	815 KAR 6:010
198B.704	815 KAR 6:100
198B.706	815 KAR 6:001
	815 KAR 6:010
	815 KAR 6:030
	815 KAR 6:090
198B.712	815 KAR 6:010
	815 KAR 6:040
	815 KAR 6:080
	815 KAR 6:090
198B.714	815 KAR 6:010
198B.716	815 KAR 6:010
198B.722	815 KAR 6:010
	815 KAR 6:040
	815 KAR 6:080
	815 KAR 6:090
198B.724	815 KAR 6:010
	815 KAR 6:040
	815 KAR 6:080
198B.728	815 KAR 6:030
	815 KAR 6:090
198B.730	815 KAR 6:090
198B.738	815 KAR 6:010
199.011	922 KAR 1:360
199.640-199.680	922 KAR 1:360
199.801	922 KAR 1:360
199.892	922 KAR 2:160
199.894	922 KAR 2:160
199.896	922 KAR 2:160
199.898	922 KAR 2:160
199.8982	922 KAR 2:160
199.899	922 KAR 2:160
199.8994	922 KAR 2:160
200.503	902 KAR 20:430
	902 KAR 20:440
202A.051	922 KAR 5:070
202B.100	922 KAR 5:070
205.010	910 KAR 1:180
205.201	910 KAR 1:180
205.203	910 KAR 1:180
205.455-465	910 KAR 1:180
205.520	907 KAR 15:020
	907 KAR 15:025
	907 KAR 3:005
	907 KAR 15:070
	907 KAR 15:075
205.560	907 KAR 3:005

KRS INDEX

KRS SECTION	REGULATION
209	922 KAR 5:070
	922 KAR 5:120
209.030	910 KAR 1:180
210.005	902 KAR 20:430
	902 KAR 20:440
210.710	908 KAR 3:050
	908 KAR 3:060
210.720	908 KAR 3:050
	908 KAR 3:060
210.730	908 KAR 3:050
	908 KAR 3:060
211.090	902 KAR 2:055
211.180	902 KAR 2:055
211.840	902 KAR 100:010
211.842-211.852	902 KAR 100:010
	902 KAR 100:012
	902 KAR 100:019
	902 KAR 100:042
	902 KAR 100:058
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
211.990	902 KAR 100:010
	902 KAR 100:012
	902 KAR 100:019
	902 KAR 100:042
	902 KAR 100:058
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
211.9101-9135	902 KAR 95:040
214.032-214.036	902 KAR 2:055
214.034	702 KAR 1:160
214.036	702 KAR 1:160
	922 KAR 2:160
216.2920-216.2929	900 KAR 7:030
216.2925	902 KAR 20:008
216.530	902 KAR 20:008
216B.010	900 KAR 6:070
	900 KAR 6:075
	902 KAR 20:008
216B.010-216B.130	900 KAR 6:055
216B.015	900 KAR 6:030
	900 KAR 6:060
	900 KAR 6:065
	900 KAR 6:075
	900 KAR 6.125
	902 KAR 20:008
216B.040	900 KAR 6:060
	900 KAR 6:065
	902 KAR 20:008
216B.042	902 KAR 20:008
216B.045-055	902 KAR 20:008
216B.062	900 KAR 6:065
216B.075	902 KAR 20:008
216B.085	900 KAR 6:065
216B.090	900 KAR 6:070
	900 KAR 6:075
216B.095	900 KAR 6:060
	900 KAR 6:065
216B.105-131	902 KAR 20:008
216B.185	902 KAR 20:008
216B.330-216B.339	900 KAR 6:055
216B.445	900 KAR 6:055
	900 KAR 6:075
216B.990	900 KAR 6:055
	900 KAR 6:070
	900 KAR 6:075
	902 KAR 20:008
224.10-110	401 KAR 8:200
	401 KAR 8:700
230.210-360	810 KAR 1:017
	811 KAR 2:090
230-215	810 KAR 1:027
	811 KAR 2:070
230.240	810 KAR 1:027
	811 KAR 2:070
230.290	810 KAR 1:027
	811 KAR 2:070
230.310	810 KAR 1:027
	811 KAR 2:070
230.320	810 KAR 1:027
	811 KAR 2:070
241.060	804 KAR 4:351
	804 KAR 4:440
	804 KAR 4.410
	804 KAR 14:010
243.030-31	804 KAR 4:230
243.050	804 KAR 4:230
243.075	804 KAR 10:030
243.090	804 KAR 4:440
243.380	804 KAR 4:440
	804 KAR 4.410
243.390	804 KAR 4:440
	804 KAR 4.410
246.295	302 KAR 20:066
257.550	302 KAR 20:066
271.2	921 KAR 3:035
273.1	921 KAR 3:035
	921 KAR 3:090
273.2	921 KAR 3:035
	921 KAR 3:090
273.4	921 KAR 3:035
273.5	921 KAR 3:035
273.9	921 KAR 3:090
273.10	921 KAR 3:035
	921 KAR 3:090
273.11	921 KAR 3:035
273.12	921 KAR 3:035
	921 KAR 3:090
273.14	921 KAR 3:035
	921 KAR 3:090
274	921 KAR 3:035
278.010	807 KAR 5.001
	807 KAR 5:011
	807 KAR 5:068
	807 KAR 5:075
	807 KAR 5:076
278.012	807 KAR 5:068
	807 KAR 5:075
278.015	807 KAR 5:068
	807 KAR 5:075
278.020	807 KAR 5.001
	807 KAR 5:069
	807 KAR 5:120
278.023	807 KAR 5:069
278.030	807 KAR 5:011
	807 KAR 5:075
	807 KAR 5:076
278.040	807 KAR 5:075
278.100	807 KAR 5.001
278.160	807 KAR 5:011
	807 KAR 5:076
278.170	807 KAR 5:011
278.180	807 KAR 5.001
	807 KAR 5:011
	807 KAR 5:076
278.190	807 KAR 5:011
	807 KAR 5:069
	807 KAR 5:076
278.300	807 KAR 5.001
	807 KAR 5:069

KRS INDEX

KRS SECTION	REGULATION
278.310	807 KAR 5:076
278.380	807 KAR 5:076
278.410	807 KAR 5:001
278.702	807 KAR 5:110
278.704	807 KAR 5:110
278.706	807 KAR 5:110
278.708	807 KAR 5:110
278.710	807 KAR 5:110
278.712	807 KAR 5:110
278.714	807 KAR 5:110
278.716	807 KAR 5:110
280.1	921 KAR 3:035
281.010-281.320	601 KAR 11:030
304.06	806 KAR 6:070
	806 KAR 37:010
304.1-050	806 KAR 6:070
304.2-290	806 KAR 6:070
304.15-410	806 KAR 6:070
304.24-390	806 KAR 37:010
304.24-410	806 KAR 37:010
304.3-240	806 KAR 6:070
304.3-270	103 KAR 15:180
304.33	806 KAR 37:010
304.37-020	806 KAR 37:010
304.37-030	806 KAR 37:010
304.37-110	806 KAR 37:010
304.37-120	806 KAR 37:010
304.37-130	806 KAR 37:010
309.080	902 KAR 20:430
309.130	902 KAR 20:430
	902 KAR 20:440
309.331	201 KAR 45:110
	201 KAR 45:120
	201 KAR 45:170
	201 KAR 45:180
309.335	201 KAR 45:120
310.050	201 KAR 33:010
311.571	902 KAR 20:440
311.840-311.862	902 KAR 20:440
311.860	902 KAR 20:430
314.011	922 KAR 2:160
314.042	902 KAR 20:430
	902 KAR 20:440
315.010	201 KAR 2:040
315.020	201 KAR 2:040
315.050	201 KAR 2:040
315.191	201 KAR 2:040
315.191	201 KAR 2:030
315.210	201 KAR 2:030
318.010	815 KAR 20:070
	815 KAR 20:090
	815 KAR 20:130
318.015	815 KAR 20:070
	815 KAR 20:090
	815 KAR 20:130
318.030	815 KAR 20:050
	815 KAR 20:060
	815 KAR 20:090
	815 KAR 20:130
318.134	815 KAR 20:050
318.150	815 KAR 20:060
	815 KAR 20:070
	815 KAR 20:090
	815 KAR 20:130
318.160	815 KAR 20:050
	815 KAR 20:191
318.170	807 KAR 20:040
318.200	815 KAR 20:070
	815 KAR 20:090
	815 KAR 20:130
319.050	902 KAR 20:430
	902 KAR 20:440

KRS SECTION	REGULATION
319.056	902 KAR 20:430
	902 KAR 20:440
319.064	902 KAR 20:430
319B.010	201 KAR 44:090
319B.030	201 KAR 44:090
	201 KAR 44:120
319B.130	201 KAR 44.110
319C.010	902 KAR 20:430
	902 KAR 20:440
320.390	201 KAR 5:055
322.340	807 KAR 5.001
322A.030	201 KAR 31:100
324A.035	201 KAR 30:080
	201 KAR 30:125
	201 KAR 30:200
324A.045	201 KAR 30:125
324A.065	201 KAR 30:200
324A.075	201 KAR 30:200
325.230	201 KAR 15:015
325.240	201 KAR 15:015
325.261	201 KAR 1:190
325.270	201 KAR 1:190
332.095	791 KAR 1:070
334A.030	16 KAR 2:120
334A.033	16 KAR 2:120
334A.035	16 KAR 2:120
334A.050	16 KAR 2:120
334A.060	16 KAR 2:120
335.080	902 KAR 20:430
	902 KAR 95.080
335.100	902 KAR 20:430
	902 KAR 95.080
335.300	902 KAR 20:430
	902 KAR 95.080
335.320	201 KAR 32:035
335.332	201 KAR 32:035
335.500	201 KAR 36:060
	902 KAR 20:430
	902 KAR 95.080
335.505	201 KAR 36:060
335.515	201 KAR 36:080
335.525	201 KAR 36:060
	201 KAR 36:070
335.527	201 KAR 36:070
337.275	922 KAR 2:160
350.020	405 KAR 10:025
350.060	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:025
350.062	405 KAR 10:025
350.064	405 KAR 10:025
350.093	405 KAR 10:025
350.095	405 KAR 10:025
350.100	405 KAR 10:025
350.110	405 KAR 10:025
350.151	405 KAR 8:040
	405 KAR 10:025
350.465	405 KAR 8:030
	405 KAR 10:025
350.500-521	405 KAR 10:025
365.015	807 KAR 5.001
369.102	807 KAR 5.001
387.540	922 KAR 5:070
424.300	807 KAR 5.001
434.444	201 KAR 37:010
439	501 KAR 6:050
	501 KAR 6:060
439.3401	902 KAR 20:430
600.020	922 KAR 1:360
	922 KAR 2:160
605.090	922 KAR 1:360

KRS SECTION	REGULATION
605.120	922 KAR 2:160
610.110	922 KAR 1:360
620.020	922 KAR 2:160
7 U.S.C.	921 KAR 3:035
12 U.S.C.	201 KAR 30:125
	201 KAR 30:200
15 U.S.C.	902 KAR 100:042
16 U.S.C.	300 KAR 6:010
	405 KAR 8:030
	405 KAR 8:040
20 U.S.C.	11 KAR 3:100
	807 KAR 5:001
25 U.S.C.	922 KAR 2:160
26 U.S.C.	103 KAR 15:180
29 U.S.C.	922 KAR 2:160
30 U.S.C.	405 KAR 8:030
	405 KAR 8:040
38 U.S.C.	922 KAR 2:160
42 U.S.C.	31 KAR 4:130
	31 KAR 4:140
	31 KAR 5:010
	401 KAR 8:300
	902 KAR 20:430
	902 KAR 20:440
	902 KAR 100:010
	907 KAR 3:005
	907 KAR 3:111
	907 KAR 15:020
	907 KAR 15:025
	907 KAR 15:070
	907 KAR 15:075
	910 KAR 1:180
	921 KAR 3:035
	922 KAR 1:360
	922 KAR 2:160
	922 KAR 5:070
7 C.F.R.	405 KAR 8:030
	405 KAR 8:040
	921 KAR 3:035
	921 KAR 3:090
	922 KAR 2:160
10 C.F.R.	902 KAR 100:010
	902 KAR 100:019
	902 KAR 100:042
	902 KAR 100:058
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
20 C.F.R.	922 KAR 2:160
21 C.F.R.	401 KAR 8:700
	902 KAR 100:100
29 C.F.R.	702 KAR 1:160
30 C.F.R.	405 KAR 8:030
	405 KAR 8:040
34 C.F.R.	11 KAR 3:100
36 C.F.R.	300 KAR 6:010
39 C.F.R.	902 KAR 100:070
40 C.F.R.	405 KAR 8:030
	405 KAR 8:040
	401 KAR 8:200
	401 KAR 8:300
	902 KAR 100:019
42 C.F.R.	902 KAR 20:430
	902 KAR 95.080
	907 KAR 3:005
45 C.F.R.	807 KAR 5:001
	902 KAR 2:055
	902 KAR 20:430
	902 KAR 95.080
	902 KAR 100:072
	907 KAR 3:005
	922 KAR 2:160
47 C.F.R.	807 KAR 5.001
49 C.F.R.	791 KAR 1:060
	902 KAR 100:019
	902 KAR 100:070
2014 Ky. Acts ch. 117	922 KAR 1:360
2014 Ky. Acts ch. 117	922 KAR 2:160

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published 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.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

201 KAR 38:010		7-17-14
201 KAR 38:020		7-17-14
201 KAR 38:030		7-17-14
201 KAR 38:040		7-17-14
201 KAR 38:060		7-17-14
201 KAR 38:070		7-17-14
803 KAR 2:060		7-17-14
804 KAR 3:100		7-15-14
804 KAR 4:110		7-15-14
804 KAR 4:150		7-15-14
804 KAR 4:340		7-15-14
804 KAR 4:370		7-15-14
804 KAR 4:385		7-15-14
804 KAR 8:060		7-15-14
804 KAR 9:020		7-15-14
804 KAR 9:030		7-15-14
804 KAR 10:010		7-15-14
804 KAR 10:020		7-15-14
804 KAR 11:030		7-15-14
804 KAR 13:010		7-15-14
805 KAR 4:020		6-26-14
805 KAR 4:050		6-26-14
805 KAR 4:060		6-26-14
907 KAR 12:010		9-10-14
910 KAR 1:180	‡	9-4-14
921 KAR 3:042	‡	7-1-14

ACCOUNTANCY, STATE BOARD OF
Examination sections, applications, and procedures; 201 KAR 1:190

ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF
Licensing
Application, basic and renewal form; 804 KAR 4:400
Application, special and registration form; 804 KAR 4:410
Malt beverage and wine for personal use; 804 KAR 14:010
Repeal of 804 KAR 4:070, 4:350, and 4:420; 804 KAR 4:351
Supplemental licenses, extended hours; 804 KAR 4:230
Local Administrators
Local government regulatory license fees; 804 KAR 10:040

BARBERING, BOARD OF
Sanitation requirements; 201 KAR 14:085

COMMUNITY BASED SERVICES, DEPARTMENT FOR
Adult Services
Caregiver misconduct registry and appeals; 922 KAR 5:120
Protective services; 922 KAR 5:070
Child Welfare
Appeal of child abuse and neglect investigative finding; 922 KAR 1:480
Private child care placement, levels of care, and payment; 922 KAR 1:360
Service appeals; 922 KAR 1:320
Day Care
Child Care Assistance Program; 922 KAR 2:160
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
Hearings and appeals; 921 KAR 2:055
Supplemental Nutrition Assistance Program
Certification process; 921 KAR 3:035
Hearings, fair; 921 KAR 3:070
Simplified Assistance for the Elderly Program or "SAFE"; 921 KAR 3:090

COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
Candidate Physical Ability Test; 739 KAR 2:090

CORRECTIONS, DEPARTMENT OF
Office of the Secretary
Luther Luckett Correctional Complex; 501 KAR 6:050
Northpoint Training Center, 501 KAR 6:060
Policies and procedures, 501 KAR 6:020

COUNSELORS, BOARD OF LICENSED PROFESSIONAL
Education and examination requirements, 201 KAR 36:070
Experience under supervision; qualifications, 201 KAR 36:060
Inactive and retired licensure, 201 KAR 36:080

CRIMINAL JUSTICE TRAINING; OFFICE OF
General Training Provision
Certified Court Security Officers Academy trainee requirements; 503 KAR 3:110
Definitions; 503 KAR 3:005
Recruit conduct requirements; 503 KAR 3:010
Telecommunications Academy trainee requirements; 503 KAR 3:040
Kentucky Law Enforcement Council *(See Kentucky Law Enforcement Council)* 503 KAR Chapter 1

DENTISTRY, BOARD OF
Anesthesia and sedation; 201 KAR 8:550

DIABETES EDUCATORS, BOARD OF LICENSED
Application procedures; 201 KAR 45:170
Education courses; 201 KAR 45:180
Renewal, reinstatement, and inactive status; 201 KAR 45:120
Supervision and work experience; 201 KAR 45:110

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Commission on Proprietary Education *(See Kentucky Commission on Proprietary Education)* KAR Title 791
Education; Kentucky Board of
Assessment and Accountability
Intervention options in priority schools and districts; 703 KAR 5:260
Repeal of 703 KAR 5:120 and 5:180; 703 KAR 5:122
General Administration
School health services; 702 KAR 1:160
Office of Instruction
Professional growth and effectiveness system; 704 KAR 3:370
School Terms, Attendance and Operation
Calendar; 702 KAR 7:140
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

EDUCATION PROFESSIONAL STANDARDS BOARD
Teaching Certificates
Emergency certification and out-of-field teaching; 16 KAR 2:120
Kentucky teaching certificates; 16 KAR 2:010
University-based Alternative Certification Program
Program; 16 KAR 9:080

ELECTIONS, STATE BOARD OF
Forms and Procedures
Absentee ballots via facsimile or electronically; 31 KAR 4:130
Federal postcard application via email; 31 KAR 4:140
Statewide Voter Registration
Overseas voter without a recognized residential address; 31 KAR 3:030
Voting
Federal write-in absentee ballot; 31 KAR 5:010

EMBALMERS AND FUNERAL DIRECTORS, BOARD
Board members; per diem compensation, 201 KAR 15:015

ENERGY ENVIRONMENT CABINET
Public Service Commission *(See Public Service Commission) KAR Title 807*

FINANCE AND ADMINISTRATION CABINET
Commonwealth Office of Technology
Data breach notification forms; 200 KAR 1:015
Revenue; Department of *(See Revenue, Department of)*
School Facilities Construction Commission
Emergency and targeted Investment Fund; 750 KAR 1:030

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Fish
Asian Carp and Scaled Rough Fish Harvest Program; 301 KAR 1:152
Nontraditional fishing methods; 301 KAR 1:410
Reciprocal agreements; 301 KAR 1:220
Game
Black bears; 301 KAR 2:300
Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas; 301 KAR 2:178
Dove, wood duck, teal, other migratory game bird hunting; 301 KAR 2:225

GENERAL GOVERNMENT CABINET
Accountancy *(See Accountancy, State Board of)* 201 KAR Chapter 1
Barbering *(See Barbering, Board of)* 201 KAR Chapter 14
Dentistry *(See Dentistry, Board of)* 201 KAR Chapter 8
Diabetes Educators *(See Diabetes Educators; Board of Licensed)* 201 KAR Chapter 45
Dietitians and Nutritionists, Board of Licensure and Certification for Fees; 201 KAR 33:010
Nursing *(See Nursing, Board of)* 201 KAR Chapter 21
Physical Therapy *(See Physical Therapy, Board of)* 201 KAR Chapter 22

Optometric Examiners, Board of
Telehealth; 201 KAR 5:055
Marriage and Family Therapists, Board of Licensure for
Supervision of therapist associates; 201 KAR 32:035
Professional Art Therapists, Board of Licensure *(See Professional Art Therapists, Board of Licensure) 201 KAR Chapter 34*
Professional Engineers and Land Surveyors *(See Professional Engineers and Land Surveyors Board of Licensure for)* 201 KAR Chapter 18
Professional Geologists *(See Professional Geologists, Board of Registration for)* 201 KAR Chapter 31
Real Estate Appraisers *(See Real Estate Appraisers Board)* 201 KAR Chapter 30
Social Work *(See Social Work, Board of)* 201 KAR Chapter 23
Veteran's Affairs, Department of
Kentucky Veterans' Program Trust fund; 201 KAR 37:010

HEALTH AND FAMILY SERVICES, CABINET FOR
Aging and Independent Living, Department of
Aging Services
Homecare program for the elderly; 910 KAR 1:180
Guardianship
Adult guardianship, service provisions for; 910 KAR 2:040
Behavioral Health, Developmental and Intellectual Disabilities
Institutional Care
"Means test" for determining patient liability; 908 KAR 3:060
Per diem rates; 908 KAR 3:050
Community Based Services *(See Community Based Services; Department for)* KAR Title 921
Certificate of Need
Annual surveys; 900 KAR 6:125
Application
Process; 900 KAR 6:065
Timetable for submission; 900 KAR 6:060
Expenditure minimums; 900 KAR 6:030
Inspector General, Office
Health Care Division
Facilities; behavioral health service organizations, 902 KAR 20:430
Facilities; residential crisis stabilization units, 902 KAR 20:440
Medicaid Services *(See Medicaid Services, Department for)* KAR Title 907
Public Health *(See Public Health, Department for)* KAR Title 902

HIGHER EDUCATION ASSISTANCE AUTHORITY
Commonwealth Merit Scholarship Program
KEES overpayment and refund procedure; 11 KAR 15:060
Early Childhood Development Scholarship Program
Applicant selection process; 11 KAR 16:010
Definitions; 11 KAR 16:001
Grant Program
CAP grant student eligibility; 11 KAR 5:034
Definitions; 11 KAR 5:001
KTG student eligibility requirements; 11 KAR 5:033
Refund, repayment policy; 11 KAR 5:170
Kentucky Loan Program
Administrative wage garnishment; 11 KAR 3:100
Teacher Scholarship Loan Program
Teacher scholarships; 11 KAR 8:030

HOME INSPECTORS, BOARD OF
Conduct standards; 815 KAR 6:030
Compensation; 815 KAR 6:100
Complaints and administrative hearings; 815 KAR 6:090
Continuing education provider; 815 KAR 6:080
Definitions; 815 KAR 6:001
Licensing requirements and records maintenance; 815 KAR 6:010
Prelicensing providers; 815 KAR 6:040

HORSE RACING COMMISSION
Quarter Horse, Appaloosa and Arabian Racing
Entries, subscriptions, and declarations; 811 KAR 2:027
Objections and complaints; 811 KAR 2:090
Thoroughbred Racing
Entries, subscriptions, and declarations; 810 KAR 1:027
Objections and complaints; 810 KAR 1:017

HOUSING, BUILDINGS AND CONSTRUCTION; DEPARTMENT OF
Plumbing *(See Plumbing, Division of)* 815 KAR Chapter 20

INSURANCE, DEPARTMENT OF
Assets and Liabilities
Valuation of life insurance; annuity reserves; 806 KAR 6:070
Fraud
Designation of contact person; 806 KAR 47:010
Insurance Holding Company Systems
Systems; 806 KAR 37:010
Premium Finance Companies
Minimum service charge abuse; 806 KAR 30:020

JUSTICE AND PUBLIC SAFETY CABINET
Corrections *(See Corrections, Department of)* KAR Title 501
Criminal Justice Training *(See Criminal Justice Training; Office of)* KAR Title 503
Kentucky Law Enforcement Council *(See Kentucky Law Enforcement Council)* 503 KAR Chapter 1
Office of the Secretary
Repeal of 500 KAR Chapter 4; 500 KAR 4:011

KENTUCKY COMMISSION ON PROPRIETARY EDUCATION
Applications, permits and renewals; 791 KAR 1:010
Commercial driver license training school instructor application; 791 KAR 1:070
Commercial driver license training school license application; 791 KAR 1:050
Commercial driver license training school license application renewal; 791 KAR 1:060
Fees; 791 KAR 1:025
Hearing procedures; 791 KAR 1:030
Licensure standards; 791 KAR 1:020
Repeal of 791 KAR 1:090; 791 KAR 1:091
Student protection fund; 791 KAR 1:035

KENTUCKY LAW ENFORCEMENT COUNCIL
Course curriculum approval; 503 KAR 1:090
Definitions; 503 KAR 1:060
Instructor certification; 503 KAR 1:100
Professional development in-service training, graduation requirements, recognized courses, and records; 503 KAR 1:120
Schools, certification; 503 KAR 1:080
Training, qualifications; application; 503 KAR 1:070

MEDICAID SERVICES, DEPARTMENT FOR
Behavioral Health
Coverage for services provided by behavioral health service organizations; 907 KAR 15:020
Reimbursement for services provided by behavioral health service organizations; 907 KAR 15:020
Residential crisis stabilization units, coverage; 907 KAR 15:070
Residential crisis stabilization units, reimbursement; 907 KAR 15:075
Definitions; 907 KAR 15:005
Payments and Services
Coverage of physicians' services; 907 KAR 3:005
Repeal of 907 KAR 3:110; 907 KAR 3:111
Veterans' Affairs Nursing Facilities
Definitions; 907 KAR 18:001
Reimbursement for Veterans Affairs nursing facility services; 907 KAR 18:005

MEDICAL LICENSURE; BOARD OF
Athletic trainers, continued licensure; 201 KAR 9:305
Athletic trainers, fee schedule; 201 KAR 9:307

NATURAL RESOURCES, DEPARTMENT OF
Permits
Surface coal mining permits; 405 KAR 8:030
Underground coal mining permits; 405 KAR 8:040
Reclamation Guaranty Fund, Office
Performance bond subsidy, extension; 405 KAR 10:025

NURSING, BOARD OF
Advanced practice registered nurse licensure and certification requirements; 201 KAR 20:056
Alternative program; 201 KAR 20:450
Applications for licensure; 201 KAR 20:370
Evaluation of prelicensure registered nurse and practical nurse programs; 201 KAR 20:360
Investigation and disposition of complaints; 201 KAR 20:161
Scope and standards of practice of APRNs; 201 KAR 20:057
Sexual Assault Nurse Examiner Program standards and credential requirements; 201 KAR 20:411

PERSONNEL CABINET
Classified
2015 Plan Year Handbook For public Health Insurance Program; 101 KAR 2:210

PHARMACY, BOARD OF
Interns; registration, 201 KAR 2:040
License transfer, 201 KAR 2:030

PHYSICAL THERAPY, BOARD OF
Renewal, reinstatement of physical therapist or physical therapist assistant; 201 KAR 22:040
Telehealth and telephysical therapy; 201 KAR 22:160

PLUMBING, DIVISION OF
Fixtures; 815 KAR 20:070
House sewers, storm water piping; installation; 815 KAR 20:130
Installation permits; 815 KAR 20:050
Materials; quality and weight of; 815 KAR 20:060
Minimum fixture requirements; 815 KAR 20:191
Soil, waste, and vent systems; 815 KAR 20:090
Vehicle identification; 815 KAR 20:040

PROFESSIONAL ENGINEERS AND LAND SURVEYORS, BOARD OF LICENSURE FOR
Continuing professional development for professional land surveyors; 201 KAR 18:192

PROFESSIONAL GEOLOGISTS; BOARD OF REGISTRATION FOR
Administrative subpoena; 201 KAR 31:100

PROSTHETICS, ORTHOTICS, AND PEDORTHICS, BOARD
Licensure requirements, 201 KAR 44:090
Licensure by endorsement, 201 KAR 44:110
Post residency registration, 201 KAR 44:120

PUBLIC HEALTH, DEPARTMENT FOR
Communicable Diseases
Immunization data reporting and exchange; 902 KAR 2:055
Health Services and Facilities
License procedures and fee schedules; 902 KAR 20:008
Radiology
Decommissioning and financial surety; 902 KAR 100:042
Definitions; 902 KAR 100:010
Fee schedule; 902 KAR 100:012
Industrial radiography; 902 KAR 100:100
Licenses to manufacture, assemble, repair, distribute products; 902 KAR 100:058
Protection standards; 902 KAR 100:019
Radionuclides in the health arts; 902 KAR 100:072
Transportation of radioactive material; 902 KAR 100:070
Wire line services operations; 902 KAR 100:142
Radon
Radon Contractor Certification Program; 902 KAR 95:040

PUBLIC PROTECTION CABINET
Home Inspectors *(See Home Inspectors, Board of)* 815 KAR Chapter 6
Housing, Buildings and Construction *(See Housing, Buildings and Construction; Department of) KAR Title 815*
Plumbing *(See Plumbing, Division of)* 815 KAR Chapter 20
Insurance *(See Insurance, Department of)* KAR Title 806

PUBLIC SERVICE COMMISSION
Utilities
Alternative rate adjustment procedure for small utilities; 807 KAR 5:076
Applications for certificate of public convenience and necessity for certain electric transmission lines; 807 KAR 5:120
Board proceedings; 807 KAR 5:110
Filing requirements and procedures for federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district; 807 KAR 5:069
Purchased water adjustment for water districts and water associations; 807 KAR 5:068
Rules of procedure; 807 KAR 5:001
Tariffs; 807 KAR 5:011
Treated sewage adjustment for water districts and water accessories; 807 KAR 5:075

REAL ESTATE APPRAISERS BOARD
Continuing education; 201 KAR 30:125
Distance education standards; 201 KAR 30:180
Reciprocity; 201 KAR 30:200

REVENUE, DEPARTMENT OF
Income Tax; General Administration
Kentucky new markets development program tax credit; 103 KAR 15:180
Selective Excise Tax: Motor Vehicle Usage
Measurement of Compressed Natural Gas (CNG) and liquefied natural gas (LNG) in gallons; 103 KAR 43:330

SCHOOL FACILITIES CONSTRUCTION COMMISSION
(See Finance and Administration Cabinet)

SECRETARY OF STATE
Address Confidentiality Program
Kentucky Address Confidentiality Program; 30 KAR 6:010

SOCIAL WORK, BOARD OF
Temporary permission to practice; 201 KAR 23:015

TOURISM, ARTS AND HERITAGE CABINET
Fish and Wildlife Resources; Kentucky Department of *(See Fish and Wildlife Resources; Kentucky Department of) KAR Title 301*
Heritage Council
Historic rehabilitation tax credit certifications; 300 KAR 6:010

TRANSPORTATION CABINET
Department of Vehicle Regulation
Driver Licensing, Division
CDL restrictions and endorsements, 601 KAR 11:030

VETERINARIAN, STATE OFFICE
Chronic wasting disease, surveillance in farmed cervids, 302 KAR 20:066

WATER, DIVISION
Drinking Water (Public Water Supply)
Bottled water, 401 KAR 8:700
Lead and copper, 401 KAR 8:300
Microbiological monitoring, 401 KAR 8:200