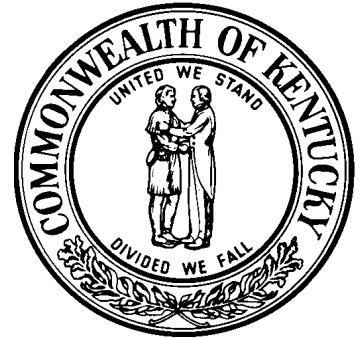


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 44, NUMBER 3
FRIDAY, SEPTEMBER 1, 2017

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, August 15, 2017.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet September 11, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **489-492** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2017 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, SEPTEMBER 11, 2017, at 1:00 p.m., Room 149 Capitol Annex**

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.

13 KAR 2:130. Comprehensive funding model for the allocation of general fund appropriations to the Kentucky Community and Technical College System institutions.

Adult Education and Literacy

13 KAR 3:050. GED® eligibility requirements.

AUDITOR OF PUBLIC ACCOUNTS

Audits

45 KAR 1:030. Audits of sheriffs' tax settlements.

45 KAR 1:040. Audits of county fee officials.

45 KAR 1:050. Audits of fiscal courts.

FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

Board of Trustees

102 KAR 1:070. Application for retirement.

DEPARTMENT OF MILITARY AFFAIRS

Division of Administrative Services

Military Assistance Trust Funds

106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member. (Not Amended After Comments)

GENERAL GOVERNMENT CABINET

Board of Pharmacy

Board

201 KAR 2:380. Board authorized protocols.

Board of Nursing

Board

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

Board of Licensure for Occupational Therapy

Board

201 KAR 28:200. Continuing competence. (Deferred from August)

PUBLIC PROTECTION CABINET

Office of Occupations and Professions

Board of Registration for Professional Geologists

Board

201 KAR 31:010. Fees. (Deferred from August)

Board of Licensed Professional Counselors

Board

201 KAR 36:065. Licensed professional clinical counselor supervisor.

201 KAR 36:070. Application, education, and examination requirements.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:201. Taking of fish by traditional fishing methods.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:230. Little Sandy Correctional Complex.

501 KAR 6:270 & E. Probation and parole policies and procedures. ("E" expires 12/25/2017)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Driver Licensing

Administration

601 KAR 2:030 & E. Ignition interlock. ("E" Expires 11/21/2017) (Not Amended After Comments)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workplace Development

Office of Employment and Training

Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim. (Not Amended After Comments) (Deferred from January)

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Health and Safety Compliance
Division of Occupational Safety and Health Education and Training

Occupational Safety and Health

803 KAR 2:425 & E. Toxic and hazardous substances. ("E" expires 12/23/2017)

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Licensing

804 KAR 4:390. License renewals.

804 KAR 4:400. Applications incorporated by reference.

804 KAR 4:410. Product registration and forms.

Transportation of Alcoholic Beverages

804 KAR 8:050. Signs on vehicles used.

PUBLIC PROTECTION CABINET
Department of Insurance

Authorization of Insurers and General Requirements

806 KAR 3:011. Repeal of 806 KAR 3:010, 806 KAR 3:020, and 806 KAR 3:220.

806 KAR 3:210. Privacy of consumer financial and health information.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:031. Repeal of 806 KAR 5:030 and 806 KAR 5:040.

Investments

806 KAR 7:011. Repeal of 806 KAR 7:010.

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:051. Repeal of 806 KAR 9:050 and 806 KAR 9:300.

Health Insurance Contracts

806 KAR 17:575. Pharmacy benefit managers. (Amended After Comments) (Deferred from August)

Domestic Stock and Mutual Insurers

806 KAR 24:022. Repeal of 806 KAR 24:020.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

State Health Plan

900 KAR 5:020. State Health Plan for facilities and services.

Office of the Secretary
Medical Review Panel Branch

Medical Review Panels

900 KAR 11:010 & E. Medical review panels. ("E" Expires 12/26/2017)

Office of Inspector General
Division of Healthcare

Health Services and Facilities

902 KAR 20:360 & E. Abortion facilities. ("E" Expires 12/13/2017)

Division of Audits and Investigations

Controlled Substances

902 KAR 55:110. Monitoring system for prescription controlled substances.

Department for Public Health

Radon

902 KAR 95:040. Radon Contractor Certification Program. (Amended After Comments)

Radiology

902 KAR 100:180. Technologically enhanced naturally occurring radioactive material related to oil and gas development.

Department for Medicaid Services
Division of Policy and Operations

Medicaid Services

907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.

907 KAR 1:047. Community mental health center primary care services.

907 KAR 1:102. Advanced practice registered nurse services.

907 KAR 1:104. Reimbursement for advanced practice registered nurse services.

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.

Payment and Services

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

907 KAR 3:010. Reimbursement for physicians' services.

Department for Community Based Services
Division of Family Support

Supplemental Nutrition Assistance Program

921 KAR 3:025. Technical requirements. (Not Amended After Comments)

921 KAR 3:042. Supplemental Nutrition Assistance Program employment and training program. (Amended After Comments)

Division of Protection and Permanency

Child Welfare

922 KAR 1:140 & E. Foster care and adoption permanency services. ("E" Expires 12/26/2017)

922 KAR 1:320. Service appeals.

922 KAR 1:330. Child protective services.

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- 922 KAR 1:421. Repeal of 922 KAR 1:420.
922 KAR 1:430. Child protective services in-home case planning and service delivery.
922 KAR 1:470. Central registry.
922 KAR 1:480. Appeal of child abuse and neglect investigative findings.
922 KAR 1:490 & E. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements. ("E" Expires 12/26/2017)
922 KAR 1:550 & E. Operator's license for children in the custody of the cabinet. ("E" Expires 12/26/2017)

REMOVED FROM SEPTEMBER AGENDA

GENERAL GOVERNMENT CABINET Board of Medical Licensure

Board

- 201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances. (Comments Received; SOC due 9/15/2017)

Board of Embalmers and Funeral Directors

Board

- 201 KAR 15:030. Fees. (Deferred from August)
201 KAR 15:050. Apprenticeship and supervision requirements. (Deferred from August)
201 KAR 15:110. Funeral establishment criteria. (Comments Received; SOC due 8/15/2017)

Board of Licensure for Occupational Therapy

Board

- 201 KAR 28:235. Telehealth occupational therapy services. (Comments Received; SOC ext., due 9/15/2017)

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management

Identification and Listing of Hazardous Waste

- 401 KAR 31:002. Repeal of 401 KAR 31:005, 401 KAR 31:010, 401 KAR 31:020, 401 KAR 31:030, 401 KAR 31:035, 401 KAR 31:040, 401 KAR 31:050, 401 KAR 31:070, 401 KAR 31:100, 401 KAR 31:110, 401 KAR 31:160, and 401 KAR 31:170. (Comments Received; SOC due 9/15/2017)

Standards Applicable to Generators of Hazardous Waste

- 401 KAR 32:002. Repeal of 401 KAR 32:005, 401 KAR 32:010, 401 KAR 32:020, 401 KAR 32:030, 401 KAR 32:040, 401 KAR 32:050, 401 KAR 32:060, 401 KAR 32:065, and 401 KAR 32:100. (Comments Received; SOC due 9/15/2017)

Standards Applicable to Transporters of Hazardous Waste

- 401 KAR 33:002. Repeal of 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030. (Comments Received; SOC due 9/15/2017)

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

- 401 KAR 34:002. Repeal of 401 KAR 34:005, 401 KAR 34:010, 401 KAR 34:020, 401 KAR 34:030, 401 KAR 34:040, 401 KAR 34:050, 401 KAR 34:060, 401 KAR 34:070, 401 KAR 34:080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130, 401 KAR 34:180, 401 KAR 34:190, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, 401 KAR 34:240, 401 KAR 34:245, 401 KAR 34:250, 401 KAR 34:275, 401 KAR 34:280, 401 KAR 34:281, 401 KAR 34:285, 401 KAR 34:287, 401 KAR 34:290, 401 KAR 34:320, 401 KAR 34:330, 401 KAR 34:340, 401 KAR 34:350, 401 KAR 34:360, and 401 KAR 34:370. (Comments Received; SOC due 9/15/2017)

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

- 401 KAR 35:002. Repeal of 401 KAR 35:005, 401 KAR 35:010, 401 KAR 35:020, 401 KAR 35:030, 401 KAR 35:040, 401 KAR 35:050, 401 KAR 35:060, 401 KAR 35:070, 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130, 401 KAR 35:180, 401 KAR 35:190, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, 401 KAR 35:230, 401 KAR 35:240, 401 KAR 35:245, 401 KAR 35:250, 401 KAR 35:260, 401 KAR 35:270, 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, 401 KAR 35:285, 401 KAR 35:290, 401 KAR 35:310, 401 KAR 35:320, 401 KAR 35:330, 401 KAR 35:340, and 401 KAR 35:350. (Comments Received; SOC due 9/15/2017)

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste

- 401 KAR 36:002. Repeal of 401 KAR 36:005, 401 KAR 36:020, 401 KAR 36:025, 401 KAR 36:030, 401 KAR 36:060, 401 KAR 36:070, 401 KAR 36:080, and 401 KAR 36:090. (Comments Received; SOC due 9/15/2017)

Land Disposal Restrictions

- 401 KAR 37:002. Repeal of 401 KAR 37:005, 401 KAR 37:010, 401 KAR 37:020, 401 KAR 37:030, 401 KAR 37:040, 401 KAR 37:050, 401 KAR 37:060, and 401 KAR 37:110. (Comments Received; SOC due 9/15/2017)

Hazardous Waste Permitting Process

- 401 KAR 38:002. Repeal of 401 KAR 38:005, 401 KAR 38:010, 401 KAR 38:020, 401 KAR 38:025, 401 KAR 38:030, 401 KAR 38:040, 401 KAR 38:050, 401 KAR 38:060, 401 KAR 38:070, 401 KAR 38:080, 401 KAR 38:090, 401 KAR 38:150, 401 KAR 38:160, 401 KAR 38:170, 401 KAR 38:180, 401 KAR 38:190, 401 KAR 38:200, 401 KAR 38:210, 401 KAR 38:230, 401 KAR 38:240, 401 KAR 38:250, 401 KAR 38:260, 401 KAR 38:270, 401 KAR 38:290, 401 KAR 38:300, 401 KAR 38:310, 401 KAR 38:320, 401 KAR 38:330, and 401 KAR 38:500. (Comments Received; SOC due 9/15/2017)

Hazardous Waste Fees

- 401 KAR 39:005. Definitions for 401 KAR Chapter 39. (Comments Received; SOC due 9/15/2017)
401 KAR 39:011. Repeal of 401 KAR 39:100 and 401 KAR 39:110. (Comments Received; SOC due 9/15/2017)
401 KAR 39:060. General requirements. (Comments Received; SOC due 9/15/2017)
401 KAR 39:080. Hazardous waste handlers. (Comments Received; SOC due 9/15/2017)
401 KAR 39:090. Hazardous waste permit program. (Comments Received; SOC due 9/15/2017)
401 KAR 39:120. Permit review, determination timetables, and fees. (Comments Received; SOC due 9/15/2017)

Standards for Special Collection System Wastes

- 401 KAR 43:002. Repeal of 401 KAR 43:005, 401 KAR 43:010, 401 KAR 43:020, 401 KAR 43:030, 401 KAR 43:040, 401 KAR 43:050, 401 KAR 43:060, and 401 KAR 43:070. (Comments Received; SOC due 9/15/2017)

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Standards for the Management of Used Oil

401 KAR 44:002. Repeal of 401 KAR 44:005, 401 KAR 44:010, 401 KAR 44:020, 401 KAR 44:030, 401 KAR 44:040, 401 KAR 44:050, 401 KAR 44:060, 401 KAR 44:070, and 401 KAR 44:080. (Comments Received; SOC due 9/15/2017)

Special Waste

401 KAR 45:060. Special waste permit-by-rule. (Comments Received; SOC due 9/15/2017)

Standards for Solid Waste Facilities

401 KAR 48:005. Definitions related to 401 KAR Chapter 48. (Comments Received; SOC due 9/15/2017)

401 KAR 48:090. Operating requirements for contained landfills. (Comments Received; SOC due 9/15/2017)

Certificates of Environmental Safety and Public Necessity

410 KAR 1:002. Repeal of 410 KAR 1:010 and 410 KAR 1:020. (Comments Received; SOC due 9/15/2017)

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

Division

805 KAR 1:060. Plugging wells. (Comments Received, SOC due 9/15/2017)

805 KAR 1:071. Repeal of 805 KAR 1:070. (Comments Received, SOC due 9/15/2017)

Coal Bed Methane

805 KAR 9:041. Repeal of 805 KAR 9:040. (Comments Received, SOC due 9/15/2017)

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, mailing address, e-mail address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
17 KAR 3:020E

This emergency administrative regulation is being promulgated to comply with KRS 40.325, which authorizes the Kentucky Department of Veterans Affairs to promulgate all necessary regulations for the operation of state veterans nursing homes. With the recent addition of the Radcliff Veterans Center and its new community living center concept, a new resident charge administrative regulation initiated under emergency conditions is necessary to prevent the loss of federal and state funds. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1) will result in the application of an outdated fee structure for veterans admitted into our nursing homes and the loss of thousands of dollars to the state because of the outdated fee structure. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulation Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
BG (R) NORMAN E. ARFLACK, Commissioner

OFFICE OF THE GOVERNOR
Department of Veterans' Affairs
(Emergency Amendment)

17 KAR 3:020E. Charges[Maximum charge] for room and board, goods and services[care] at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325

STATUTORY AUTHORITY: KRS 40.325(2)

EFFECTIVE: August 1, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the maximum monthly resident charge for room and care at state veterans' nursing homes.

Section 1. Definitions. (1) "Ancillary services" means services for which a separate charge is customarily made. Ancillary services include but are not limited to physical therapy, occupational therapy, speech therapy, laboratory procedures, x-ray services, oxygen services, optometry services, podiatry services, dentist services, audiology services, and pharmacy goods and services.

(2) "Department" or "KDVA" means the Kentucky Department of Veterans Affairs.

(3) "Non-routine goods or services" mean those that are directly identifiable with an individual resident and which are not customarily intended for use by all residents including such things as transportation, special activities, cable television services, pay-per-view channels, private or personal phone service, hospitalization, ambulance services, hearing aids, dentures, cosmetology or beautician services (other than basic haircuts), orthotic devices, and specialty care and equipment.

(4) "Nursing facility" means a state veterans' home (SVH) operated by the Kentucky Department of Veterans Affairs.

(5) "Private pay" means residents who pay for their nursing home care out of personal funds.

(6) "Private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements and does not have a roommate.

(7) "Resident" means a Kentucky veteran admitted to a state veterans' nursing facility.

(8) "Room and board" means the room, dietary services, social

services, nursing services, basic laundry services, the use of equipment and facilities, and routine medical and surgical supplies.

(9) "Routine goods or services" mean those which are not identifiable to a particular individual resident but which are used by all residents.

(10) "Semi-private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements and does have a roommate.

(11) "Suite" means a private suite with a private bathroom including a shower that was built in accordance with the federal VA's community living center or small house design requirements.

Section 2. Charges at state veterans nursing homes. (1) The private pay rate for room and board at a state veterans' nursing facility shall be according to the following schedule:

(a) Semi-private room - \$4,000/month;

(b) Private room - \$4,500/month; and

(c) Suite - \$5,000/month.

(2) The total monthly charge for a private pay resident shall be:

(a) The applicable private pay rate for room and board;

(b) Any charge for non-routine goods or services; and

(c) Any charge for ancillary services.

Section 3. Computation of Room and Board Charges. (1) The monthly charge (personal liability as indicated on the MAP-552) for a Medicaid qualified resident shall be established by the Kentucky Department of Medicaid services in accordance with 907 KAR 1:006. All items and services considered by the Medicaid program to be non-covered as defined in 907 KAR 1:022, that were provided to Medicaid residents during any period of a covered stay, may be billed to the resident or another payer.

(2) The monthly charge for a private pay veteran shall be established in accordance with Section 2 of this regulation.

(3) If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall not be charged for any room and board, goods, or services.

(4) The monthly charge for a Medicare recipient qualifying for skilled services shall be the applicable co-payments as established by the Centers for Medicare and Medicaid services.

(5) A late fee of six percent per annum may be assessed on any unpaid balances.

[(1) "Daily cost of care" means the total annual expenditures on nursing home operations divided by the total number of resident care days provided by the three (3) nursing homes during the course of the fiscal year.

(2) "Department" means the Kentucky Department of Veterans' Affairs.

(3) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans' Affairs.

(4) "Resident" means a veteran admitted to a state veterans' nursing home.

~~Section 2. Maximum Monthly Resident Charge. (1) The maximum charge for room and care services at a state veterans' nursing home shall be \$3,700 per month, which shall include medical and nonmedical services provided by the nursing home.~~

~~(2) Medical services obtained from sources other than the nursing home may result in a charge from the source of care to the resident. These medical services may include:~~

~~(a) X-ray;~~

~~(b) Dental;~~

~~(c) Optometry;~~

~~(d) Hospitalization;~~

~~(e) Ambulance service;~~

~~(f) Hearing aids;~~

~~(g) Podiatry;~~

~~(h) Specialized medications not on the formulary; and~~

~~(i) Specialty care and equipment.~~

~~(3) The maximum monthly charge shall be revised periodically based on changes that occur which affect the nursing homes' expenditures or sources of income. These changes may include:~~

~~(a) Increases in the daily cost of care prompted by inflation in~~

the cost of goods, services, and labor utilized to provide nursing care;

(b) Availability of general funds appropriated to the department by the legislature for operation of the three (3) state veterans' nursing homes; or

(c) Changes in the per diem allocated by the U.S. Department of Veterans Affairs.

(4) If changes are made to the maximum monthly charge, each affected resident shall be notified in writing at least thirty (30) days prior to the change taking effect. The maximum amount shall not be changed without an amendment to this administrative regulation made in accordance with KRS Chapter 13A.]

BG (R) NORMAN E. ARFLACK, Commissioner

APPROVED BY AGENCY: August 1, 2017

FILED WITH LRC: August 1, 2017 at 1 p.m.

CONTACT PERSON: Mark Bowman, Executive Director, Office of Kentucky Veterans Centers, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone 502-564-9203, fax 502-564-9240, email mark.bowman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Bowman

(1) Provide a brief summary of:

(a) What this administrative regulation amendment does: This amendment updates the rate structure for all state veterans nursing facilities such that rates are now pegged to the three types of resident rooms. In the past, there was only one type of room. With the construction of Radcliff Veterans Center, three distinct types of rooms were established: semi-private, private, and a suite based upon the community living standard.

(b) The necessity of this administrative regulation: It is required to encompass the new, three-tiered system of room rates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It conforms directly with the Kentucky statutes that a. establish state veteran nursing homes and b. that authorize the Kentucky Department of Veterans Affairs to operate these homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the rate structure, aligning it with the current mode of operation, this amendment provide for the efficient operation of each home.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the current resident room rate structure.

(b) The necessity of the amendment to this administrative regulation: It is required to encompass the new, three-tiered system of room rates.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms directly with the Kentucky statutes that a. establish state veteran nursing homes and b. that authorize the Kentucky Department of Veterans Affairs to operate these homes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the rate structure, aligning it with the current mode of operation, this amendment provide for the efficient operation of each home.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In answering (3) above, the effect is as follows: Local Government will not be affected by this administrative regulation amendment. State Government entities affected will be the Kentucky Department of Veterans Affairs as the administrative entity charged with planning and operation of the veterans state nursing facilities. The Finance and Administration Cabinet will also be affected through its designation as the Commonwealth's Chief Financial Officer and Controller. The individuals who will be affected are the private pay residents receiving services and care at the four veterans state nursing

facilities. It is anticipated that this will be less than 150 individuals per year. This is based upon the historical average of the number of private payors per year. The businesses and organizations that will be affected are those providing non-routine goods and services, and ancillary services to the private pay residents at the four state veterans nursing facilities. Also affected will be insurance providers that will be billed for goods and services as applicable. This number is not determinable as this will depend on the number of service providers that will be utilized and necessary based upon the level of care to provide various types of services to the veteran private pay residents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no additional actions that any of the entities identified above will have to take to comply with this administrative regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the state entities in complying with this administrative regulation amendment. There will be no additional cost to the businesses, organizations, and insurance providers in complying with this administrative regulation amendment. There will be an additional cost to private pay residents residing at the veterans state nursing facilities. This cost will vary for non-routine goods and services and ancillary services based upon the need and level of care through the residents' continuum of care and each resident's individual co-pay required by the insurance plan/provider. There will also be an additional cost to the private pay resident for the increase in rates from \$3,700/month to \$4,000/month for a semi-private room, \$4,500/month for a private room, and \$5,000/month for a suite. This cost will vary from an additional \$300/month to \$1,300/month. This increase will depend on the choice the veteran makes in the type of room.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the Kentucky Department of Veterans Affairs will be updating private pay rates that have been outdated when compared to the private nursing home industry. The increased rates will still lag behind that industry, but this is a step in the right direction. It will also increase revenues that will be assigned back to the veterans nursing facilities in order to provide better care to the residents through advancements in equipment, staffing, infrastructure, etc. The benefit to the individual private pay residents at the veterans state nursing facilities will be allowance for additional choices for their resident care such as private rooms, semi-private rooms, etc. It allows for more freedom of choice for the veteran. The benefits to the businesses, organizations, and insurance providers will be contributing to increased services to the private pay veteran residents through increased freedom of choice.

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

(a) Initially: The Kentucky Department of Veterans Affairs does not anticipate any additional cost to initially implement this administrative regulation amendment as various software programs including those for billing, accounts payable, and accounts receivable are current in place and sufficient for implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

(b) On a continuing basis: The Kentucky Department of Veterans Affairs does not anticipate any additional continuing cost to implement this administrative regulation amendment as various software programs including those for billing, accounts payable, and accounts receivable are currently in place and sufficient for implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

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

implementation and enforcement of this administrative regulation: It is not anticipated that any additional funding will need to be utilized for the implementation and enforcement of this administrative regulation amendment. Existing agency restricted funds will be utilized for the implementation and enforcement of this administrative regulation amendment as software programs, personnel, etc., are currently in place and sufficient to effectuate this administrative 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:

This administrative regulation amendment will not require an increase in funding provided to the Kentucky Department of Veterans Affairs from the General Assembly. This administrative regulation amendment will increase the room and board rate for private pay residents at the veterans state nursing facilities.

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

Yes, this administrative regulation amendment will increase the private pay room and board rates for the veterans state nursing facilities. There may also be charges assessed for ancillary services and non-routine goods and services provided to private pay veterans residents and/or their insurance providers.

(9) TIERING: Is tiering applied? Yes, tiering is applied because there are three different types of rates for three completely different types of resident rooms.

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 amendment focuses on establishing maximum monthly resident charges for room and board for private pay residents at veterans state nursing facilities. This amendment does not have an impact on local governments. The impact to state government is limited to the Kentucky Department of Veterans Affairs, as an entity charges with oversight of the state veterans nursing facilities. Also affected is the Finance and Administration Cabinet through its overall role as the Commonwealth's Controller and Chief Financial Officer.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.320 authorizes the establishment of state veterans nursing homes and assigns administrative responsibility for their planning operation to the Kentucky Department of Veterans Affairs. KRS 45.325 authorizes the Kentucky Department of Veterans Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.

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 amount of revenue that will be generated for the state the first year as a result of this administrative regulation amendment is difficult to estimate as there are many contributing factors. These factors include the number of private pay residents at the four veterans state nursing facilities, the type of services selected and required for each of those residents based upon the level of care and need, and the type of ancillary services and non-routine goods and services the private pay resident chooses or needs. The Kentucky Department of Veterans Affairs has analyzed historical data and extrapolated an estimate based on those data fields. An estimated total yearly impact on revenue for the first year of this administrative regulation amendment is \$2.4 million resulting from \$1.4 million from the increase and designation of private pay room and board rates and an additional \$1 million cost savings from fees for ancillary services and non-routine goods and services. This administrative regulation amendment will not generate revenue for

local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation amendment will not generate revenue for local government. The revenues for the state will most likely remain straight lined in subsequent years as from the first year. Therefore, the subsequent years revenue generated for the state is estimated to be approximately \$2.4 million.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year as various software programs including those for billing, accounts payable, and accounts receivable are currently in place and sufficient for the implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for the subsequent years as various software programs including those for billing, accounts payable, and accounts receivable are currently in place and sufficient for the implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

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

Revenues (+/-): +2.4 million. See 3(a) above.

Expenditures (+/-): 0.

Other Explanation: None.

STATEMENT OF EMERGENCY 32 KAR 1:020E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 under Senate Bill 75, passed by the 2017 Kentucky General Assembly during regular session and signed by the Governor on March 27, 2017. Senate Bill 75 was effective June 29, 2017. The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and to prescribe official forms for the making of required reports under KRS 121.120(4)(a). This administrative regulation must be filed on an emergency basis to meet a deadline for an administrative regulation required by state law. An ordinary administrative regulation would be insufficient because the current candidate registration form (KREF-001 Revised 05/2005) is inconsistent with the changes enacted in 2017 Senate Bill 75. The revised candidate registration form must be made available as soon as possible following the effective date of the legislation to ensure that persons who wish to register as candidates for the 2018 election cycle comply with the new law. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

MATT G. BEVIN, Governor
CRAIG C. DILGER, Chairman

DEPARTMENT OF STATE Kentucky Registry of Election Finance (Emergency Amendment)

32 KAR 1:020E. Statement of spending intent and appointment of campaign treasurer[Appointment of campaign treasurer and optional request for reporting exemption].

RELATES TO KRS 121.160(1), 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)[;]
EFFECTIVE: August 15, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.160(1) requires candidates as part of their filing papers to designate a campaign treasurer. KRS 121.180(1) permits certain candidates to request an exemption from reporting to the Registry when they file for office. This administrative regulation establishes a single form for the appointment of a campaign treasurer and the optional request for exemption from reporting.

Section 1. Appointment of Campaign Treasurer. The Statement of Spending Intent and Appointment of Campaign Treasurer Form [~~"Appointment of Campaign Treasurer and Optional Reporting Exemption Form"~~] shall be the official form to be used by candidates for the appointment of a campaign treasurer under KRS 121.160(1).

Section 2. Optional Request for Reporting Exemption. (1) The Statement of Spending Intent and Appointment of Campaign Treasurer Form [~~"Appointment of Campaign Treasurer and Optional Reporting Exemption Form"~~] shall be the official form to be used by candidates seeking an exemption from election finance reporting under KRS 121.180(1)(a)[and (b)].

(2) The Statement of Spending Intent and Appointment of Campaign Treasurer Form [~~"Appointment of Campaign Treasurer and Optional Reporting Exemption Form"~~] shall be the official form to be used by candidates seeking to rescind a request for exemption from election finance reporting under KRS 121.180(1)(b)[(c)].

Section 3. Incorporation by Reference. (1) The "Statement of Spending Intent and Appointment of Campaign Treasurer Form [~~Appointment of Campaign Treasurer and Optional Reporting Exemption Form~~]" reference KREF 001, revised 08/2017[05/2005] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: August 11, 2017

FILED WITH LRC: August 15, 2017 at 11 a.m.

CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends an existing form incorporated in 32 KAR 1:020 for the registration of candidates in Kentucky. This administrative regulation amends 32 KAR 1:020 to bring the candidate registration form into compliance with KRS 121.180(1), as amended by 2017 Senate Bill 75, by allowing candidates wishing to spend or raise \$3,000 or less for their campaign to request an official exemption from reporting to the Registry when filing for office. The present form for registration of a candidate will be deleted as obsolete.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Changes to the existing form for registration of political candidates were necessitated by the passage of 2017 Senate Bill 75, effective June 29, 2017. Changes in the candidate registration form also will provide a candidate with a clear means to register as a candidate and designate a campaign treasurer, as required by KRS

121.160(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of KRS Chapter 121, and KRS 121.160(1), as it prescribes a form for candidate registration and designation of a campaign treasurer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the registration requirements under KRS 121.160 and 121.180 and specifically complies with the provisions of 2017 Senate Bill 75.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the latest version of the candidate registration form to comply with 2017 Senate Bill 75 and includes the option for a candidate to request an exemption from reporting to the Registry when the candidate files for office. This option is recognized under existing law, per KRS 121.180(1), and was previously defined by a lower threshold spending limit. The amendment reflects the higher threshold to trigger reporting requirements of candidate campaigns as the former form is rendered obsolete by changes due to 2017 Senate Bill 75. The amendment also requires the signature of a candidate's designated campaign treasurer, due to statutory responsibilities and liability created by virtue of the designation under KRS 121.160, 121.180, and 121.990.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2017 Senate Bill 75 requires any candidate, upon registration, to designate an official spending limit. For campaigns intending to raise \$3,000 or less in an election, the candidate may request an exemption from reporting to the Registry. Amendment to the administrative regulation is necessary to bring the Registry's candidate registration form into compliance with 2017 Senate Bill 75.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.180 by prescribing a form for a candidate to request an exemption from reporting to the Registry when filing for office.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the candidate registration form to be filed by candidates into compliance with changes in KRS 121.180 due to the passage of 2017 Senate Bill 75 and will further provide a means for the candidate to clearly designate a campaign treasurer pursuant to KRS 121.160(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates registering to run for public office will be affected by this administrative regulation. As a result of 2017 Senate Bill 75, a candidate may request an exemption from reporting to the Registry, if the candidate intends to raise and/or spend \$3,000 or less, necessitating this form change. The new form also requires the signature of the person whom the candidate wishes to designate as campaign treasurer, due to the statutory responsibilities and potential for liability imposed on a campaign treasurer, per KRS 121.160, 121.180, and 121.990.

(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 will be required of current regulated entities. The Registry will provide the new forms to new registrants. The change necessitated by 2017 Senate Bill 75 requires a candidate to request a reporting exemption in the event the candidate intends to spend \$3,000 or less. The candidate will

be required to obtain the signature of the individual designated as campaign treasurer on the registration form, due to the statutory responsibilities and potential for liability imposed on a campaign treasurer by KRS 121.160, 121.180, and 121.990.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes to the candidate registration form will update the process of registration by providing including the new threshold spending limit, as defined by 2017 Senate Bill 75. A candidate will also have means to clearly designate a campaign treasurer, who must also sign to indicate consent to serve as campaign treasurer.

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

(a) Initially: Initial costs to administer the program are estimated to be less than \$10,000.

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget, as well as ordinary programming costs for resulting database changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidate registrants.

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? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015(8), 121.120(1)(g), 121.120(4)(a), 121.160(1), and 121.180(1) (as amended by 2017 Senate Bill 75)

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 as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? Initial costs to administer this program are estimated to be less than \$10,000.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated 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 (+/-): None

Expenditures (+/-): + less than \$10,000 in year 1

Other Explanation: N/A

STATEMENT OF EMERGENCY 201 KAR 2:390E

During the 2017 Regular Session, the General Assembly passed House Bill 364, which created new sections of KRS Chapter 315, the statutory scheme that governs pharmacies and pharmacists. House Bill 364 became effective June 29, 2017, and its provisions were codified as KRS 315.4102 - 315.4110. House Bill 364 created new license types, and requirements for third-party logistics providers that were previously licensed in the Commonwealth as wholesale distributors. These new requirements are based on the lapsing of a grace period under the federal Drug Supply Chain Security Act of 2013 which prohibits states from licensing third-party logistics providers as wholesale drug distributors. Effective October 1, 2017, the grace period will expire and many third-party logistics providers will be unlicensed and therefore unable to lawfully operate, thereby leaving patients without necessary medications. The ordinary administrative regulation timeline for implementation will take until at least November 2017, leaving a gap in the ability of patients to receive necessary medications. An emergency administrative regulation avoids a lapse in pharmaceutical services. Therefore, this emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)(1), (3), and (4) to meet an imminent threat to public health, safety, or welfare, meet a deadline for the promulgation of an administrative regulation, and protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

SCOTT GREENWELL, Board President

GENERAL GOVERNMENT CABINET Board of Pharmacy (New Emergency Administrative Regulation)

201 KAR 2:390E. Third-party logistics provider.

RELATES TO: KRS 315.002, 315.005, 315.191(1)(a), 315.400(18), 315.4102, 315.4104, 315.4106, 315.4108, 315.4110

STATUTORY AUTHORITY: KRS 315.400(18), 315.4102, 315.4104, 315.4108, 315.4108, 315.4110

EFFECTIVE: August 15, 2017

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.400(18) defines a third-party logistics provider. KRS 315.4102 requires a third-party logistics provider to be licensed. KRS 315.4104 requires an application and accompanying information. KRS 315.4106 establishes eligibility factors for licensure and renewal. KRS 315.4108 identifies persons disqualified as owners and designated representatives of third-party logistics providers. KRS 315.4110 establishes criteria for lawfully conducting business as a third-party logistics provider in the Commonwealth of Kentucky. This administrative regulation establishes requirements for third-party logistics providers to become licensed and operate.

Section 1. Application Requirements for Licensure Application and Renewal. (1) An applicant for initial licensure or renewal as a third party logistics provider shall submit a non-refundable fee of \$200 and a complete "Application to Operate as a Third-Party Logistics Facility" as referenced and incorporated herein. With each application for an initial license or renewal, the applicant shall provide the following information:

(a) The state of incorporation or organization if the owner is a corporation;

(b) A list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services;

(c) Information pertaining to any violation of federal, or state laws by the applicant, officer, partner, director, or pharmacist-in-charge;

(d) Information pertaining to suspension, revocation, or any sanction against a license currently or previously held by the applicant, officer, owner, partner, director, member, or pharmacist-in-charge; and

(e) Documentation of licensure as a third-party logistics provider from either the state in which the provider ships or the United States Food and Drug Administration.

(2) Licenses expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$200 for failure to renew by June 30 of each year.

(3) Licenses shall be issued only for the name, ownership, and location listed on the license application. Changes of name, ownership, or location shall require a new license.

Section 2. General Requirements. A third-party logistics provider shall:

(1) Immediately provide, upon written request of the board or its agents, and maintain for board inspection, a list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services;

(2) Immediately provide, upon written request of the board or its agents, and maintain for board inspection, a list of each partner, limited liability company member, and corporate officer or director, including a description of the duties and qualifications of each;

(3) Maintain, and make available for board inspection, records of providing third-party logistics services involving prescription drugs, and if such records are not maintained, submit an explanation why it has no records of providing third-party logistics services involving prescription drugs; and

(4) Follow closure procedures as stated in 201 KAR 2:106, Section 2.

Section 3. Incorporation by Reference. (1) "Application to Operate as a Third-Party Logistics Facility", July 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 10 a.m.

CONTACT PERSON: Steve Hart, 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, email Steve.Hart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for third-party logistics providers.

(b) The necessity of this administrative regulation: This regulation establishes requirements as authorized by KRS 315.4102-315.4110.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes application requirements for initial application and renewal, qualifications for a license, and other general requirements as authorized by KRS 315.4102-4110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Third-party logistics providers will know how to obtain a license and conduct business in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 250 entities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will submit an application, pay a fee, and conduct business pursuant to the authorizing statutes and regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board will charge \$200 for the initial application and each renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will issue a permit to operate an outsourcing facility if qualifications for a license are sufficient.

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

(a) It costs approximately \$200 per licensee to license, inspect, and enforce applicable laws and regulations that pertain to outsourcing facilities.

(b) On a continuing basis: The board will incur costs of approximately \$200 per licensee annually on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through license fees. The Board of Pharmacy generates its own revenues without contribution from the General Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a fee authorized by KRS 315.4104.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applied to all applicants equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.4102-4110 authorize the board to promulgate administrative regulations to regulate and control third-party logistics providers.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The board anticipates \$50,000 in revenue that will be generated in

fees 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 board anticipates \$50,000 in revenue that will be generated in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? The board anticipates it will spend \$50,000 to license, inspect, and enforce the laws and regulations that govern third-party logistics providers for the first year.

(d) How much will it cost to administer this program for subsequent years? The board anticipates it will spend \$50,000 to license, inspect, and enforce the laws and regulations that govern third-party logistics providers for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 2:400E

During the 2017 Regular Session, the General Assembly passed House Bill 364, which created new sections of KRS Chapter 315, the statutory scheme that governs pharmacies and pharmacists. House Bill 364 became effective June 29, 2017, and its provisions were codified as KRS 315.340 and KRS 315.342. House Bill 364 created new license types, and requirements for outsourcing facilities. These new requirements are based on the lapsing of a grace period under the federal Drug Supply Chain Security Act of 2013. Effective October 1, 2017, the grace period will expire and many facilities that currently outsource pharmaceuticals will be unlicensed and therefore unable to lawfully operate, thereby leaving patients without necessary medications. An ordinary administrative regulation timeline for implementation will take until at least November 2017, leaving a gap in the ability of patients to receive necessary medications. Without the emergency administrative regulation the Board will not be able to issue licenses between September 30th and the implementation date of the ordinary administrative regulation, which would cause patients to be denied necessary medications. An emergency administrative regulation avoids a lapse in pharmaceutical services. Therefore, this emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)(1), (3), and (4) to meet an imminent threat to public health, safety, or welfare, meet a deadline for the promulgation of an administrative regulation, and protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

SCOTT GREENWELL, Board President

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (New Emergency Administrative Regulation)

201 KAR 2:400E. Outsourcing facility.

RELATES TO: KRS 315.002, 315.005, 315.010(16), 315.191(1)(a), 315.340, 315.342

STATUTORY AUTHORITY: KRS 315.010(16), 315.340, 315.342

EFFECTIVE: August 15, 2017

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.340 establishes requirements for in-state outsourcing facilities doing business in Kentucky. KRS 315.342 establishes requirements for out-of-state outsourcing facilities doing business in Kentucky. This administrative regulation establishes further requirements for in-

state and out-of-state outsourcing facilities.

Section 1. Application Requirements for Initial Licensure and Renewal. (1) An applicant for initial licensure or renewal as an outsourcing facility shall submit:

(a) A nonrefundable fee of \$250;

(b) A complete "Application to Operate as an Outsourcer Facility";

(c) Unless previously provided, proof of registration as an outsourcing facility with the secretary of the U. S. Department of Health and Human Services, Food and Drug Administration; and

(d) Unless previously provided, a copy of the current inspection report conducted by the United States Food and Drug Administration pursuant to KRS 315.342(2)(a)(2) and (b)(1), if applicable. If a current inspection report is not available from the United States Food and Drug Administration, the applicant shall submit an inspection report by:

1. National Association of Boards of Pharmacy (NABP); or

2. The board's authorized agent.

(2) A license shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$250 for failure to renew by June 30 of each year.

Section 2. Qualifications for License. (1) The board shall consider the following in determining whether to grant a license:

(a) A felony conviction related to:

1. The practice of pharmacy;

2. Drugs; or

3. Federal or state medical assistance programs;

(b) The furnishing of false or fraudulent information in any application;

(c) Suspension or revocation of a license or permit by federal, state, or local government;

(d) Compliance with a previously granted license or permit; and

(e) Failure to maintain and make readily available those records required to be maintained by an outsourcing facility.

(2) The Board shall have the right to deny a license to an applicant if, in considering the factors listed in subsection 1 of this Section, it determines that granting such a license would not be consistent with public health and safety.

Section 3. General Requirements. An outsourcing facility shall:

(1) Permit, to the extent authorized by laws or rules, board agents to enter and inspect its premises and delivery vehicles, to audit its records and written operating procedures, and to confiscate prescription drugs and records; and

(2) Follow closure procedures as stated in 201 KAR 2:106 Section 2.

Section 4. Incorporation by Reference. (1) "Application to Operate as an Outsourcer Facility", July 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 10 a.m.

CONTACT PERSON: Steve Hart, 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, email Steve.Hart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for in-state and

out-of-state outsourcing facilities.

(b) The necessity of this administrative regulation: This regulation sets requirements as authorized by KRS 315.340 and 315.342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes application requirements for initial application and renewal, qualifications for a license, and other general requirements as authorized by KRS 315.340 and 315.342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Outsourcing facilities will know how to obtain a permit and conduct business in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 100 facilities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will submit an application, pay a fee, and conduct business pursuant to the authorizing statutes and regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KRS 315.340 permits a fee (initial application and renewal) up to \$500, but the board will only charge \$250. KRS 315.342 permits a fee of \$250 (initial application and renewal), and the board will charge \$250.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will issue a permit to operate an outsourcing facility if qualifications for a license are sufficient.

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

(a) Initially: No new costs will be incurred by the board, since many of the businesses previously licensed by the board as wholesale distributors will now convert to an outsourcer facility license. It costs approximately \$250 per licensee to license, inspect, and enforce applicable laws and regulations that pertain to outsourcing facilities.

(b) On a continuing basis: The board will incur costs of approximately \$250 per licensee annually on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through license fees. The Board of Pharmacy generates its own revenues without contribution from the General Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establish fees authorized by KRS 315.340 and 315.342.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applied to all applicants equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.340 authorize the board to promulgate administrative regulations to regulate and control in-state outsourcing facilities. KRS 315.342 authorize the board to promulgate administrative regulations to regulate and control out-of-state outsourcing facilities.

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 board anticipates \$25,000 in revenue that will be generated in fees 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 board anticipates \$25,000 in revenue that will be generated in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? The board anticipates it will spend \$25,000 to license, inspect, and enforce the laws and regulations that govern outsourcing facilities for the first year.

(d) How much will it cost to administer this program for subsequent years? The board anticipates it will spend \$25,000 to license, inspect, and enforce the laws and regulations that govern outsourcing facilities for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 14, 2017)

11 KAR 15:090. Kentucky Educational Excellence
Scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 156.010, 158.007(8), 164.002(1), (2), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889, 42 U.S.C. 1751, et seq.

STATUTORY AUTHORITY: KRS 164.7874(3), (16), 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Kentucky Higher Education Assistance Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the authority to promulgate administrative regulations establishing the KEES curriculum's courses of study. KRS 164.7879(3)(e) requires the authority to promulgate administrative regulations to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the authority to establish score equivalents between the SAT and ACT. KRS 164.7881(6) requires the authority to promulgate administrative regulations determining eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the authority to promulgate administrative regulations identifying equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term":

(a) Means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution; and

(b) Does not mean[include] summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" or "AP" is defined by KRS 164.002(1).

(5) "Cambridge Advanced International" or "CAI" is defined by KRS 164.002(2).

(6) "Course" means the equivalent of one (1) credit as determined by the Kentucky Department of Education (KDE) in 704 KAR 3:305.

(7) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) "Dual credit" is defined by KRS 158.007(8).

(9) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(10) "Free and reduced price lunch" means the National School Lunch program established by the United States Department of Agriculture, Richard B. Russell National School Lunch Act, 42 U.S.C. 1751, et seq., to provide subsidized meals to lower income students.

(11) "GED" means a general educational development diploma awarded to a student.

(12) "International Baccalaureate" or "IB" is defined by KRS 164.002(7).

(13) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic term[year] shall be calculated using each letter grade awarded for all courses taken during an academic term[year]. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as established[provided] in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic term[year]; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic term[year].

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic term[year] 2015-2016, for an eligible high school student taking a dual credit course during the academic term[year], the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic term[year] shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1.a. and b. and shall submit the Home of Record Certification form to the authority.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for requesting:

1. Grade and curriculum information from the local school; and
2. That the local school submit the information to the authority using the Curriculum Certification form and the Data Submission form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;
2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and
3. Retain the Curriculum Certification form on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

- (a) Has earned a base scholarship award in high school;
- (b) Has completed the KEES curriculum as set forth in subsection (2) of this section;
- (c) Has graduated from a Kentucky high school, except as **established[provided]** in Section 2(4) or 3 of this administrative regulation; and
- (d) Is enrolled in a participating institution in an eligible program.

(2) Except as **established[provided]** in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) Except as **established[provided]** in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary, or higher level course for a required course or required academic and career interest standards-based learning experience if the course:

(a) Provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or

(b) Is an honors course, cooperative education course, AP course, IB course, CAI course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2012-2013 academic **term[year]**, only

one (1) cooperative education course per academic **term[year]** shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student advising if the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the authority pursuant to 11 KAR 15:010, Section 1(10).

(2) Except as established in subsection (4) of this section, an eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

- (a) Landscape architecture (04.0601); and
- (b) **[For students that graduated from high school not later than the 2004-2005 academic year,]** Engineering if enrollment in the engineering program has been continuous (14.0101, 14.201, 14.0301, 14.401, 14.501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

- (a) Has not received eight (8) academic terms of a KEES award;
- (b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;
2. The optometry or veterinary medicine programs at an institution, which is a part of the Kentucky Contract Spaces Program; or
3. A program contained on the Equivalent Undergraduate Programs List; and
- (c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic **term[year]**:

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		

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1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic term/year, but prior to March 2016. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT I Recentered CR+M Score and ACT Composite Score									
SAT I CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT CR+M scores to ACT Composite scores. The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

June, 2008

(3) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after March 2016. Only the scores from the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT EBR+M Score and ACT Composite Score									
SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1380	29	1160	<u>24</u> [23]	940	<u>18</u> [17]	720	<u>13</u> [12]
1590	35	1370	29	1150	23	930	17	710	12
1580	35	1360	29	1140	23	920	17	700	12
1570	35	1350	<u>29</u> [28]	1130	<u>23</u> [22]	910	17	690	12
1560	<u>35</u> [34]	1340	28	1120	22	900	<u>17</u> [16]	680	12
1550	34	1330	28	1110	22	890	16	670	<u>12</u> [11]
1540	34	1320	28	1100	<u>22</u> [21]	880	16	660	<u>12</u> [11]
1530	<u>34</u> [33]	1310	<u>28</u> [27]	1090	21	870	16	650	<u>12</u> [11]
1520	<u>34</u> [33]	1300	27	1080	21	860	<u>16</u> [15]	640	<u>12</u> [11]
1510	33	1290	27	1070	21	850	15	630	<u>12</u> [11]
1500	33	1280	<u>27</u> [26]	1060	<u>21</u> [20]	840	15	620	11
1490	32	1270	26	1050	20	830	15	610	11
1480	32	1260	26	1040	20	820	<u>15</u> [14]	600	11
1470	32	1250	<u>26</u> [25]	1030	20	810	<u>15</u> [14]	590	11
1460	<u>32</u> [31]	1240	<u>26</u> [25]	1020	<u>20</u> [19]	800	14	<u>580</u>	<u>11</u>

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1450	32 [34]	1230	25	1010	19	790	14	570	11
1440	31	1220	25	1000	19	780	14	560	11
1430	31	1210	25 [24]	990	19	770	14 [13]		
1420	31 [30]	1200	25 [24]	980	19 [18]	760	14 [13]		
1410	30	1190	24	970	18	750	13		
1400	30	1180	24	960	18	740	13		
1390	30 [29]	1170	24 [23]	950	18	730	13 [12]		

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who has not graduated from any Kentucky or out-of-state public or nonpublic high school [either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education] shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky;

1. Prior to being admitted to a participating institution; and
2. Within[within] five (5) years after[of] attaining eighteen (18) years of age;

(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1.a. and b.;
- (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service, available at www.fns.usda.gov/school-meals/income-eligibility-guidelines.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund established by[described in] KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

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

- (a) "Home of Record Certification", June 2005;
- (b) "Curriculum Certification", June 2005;
- (c) "Data Submission", June 2005; and
- (d) "Equivalent Undergraduate Programs List", June 2005.

(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.

BECKY LAMB, Chair

APPROVED BY AGENCY: May 25, 2017

FILED WITH LRC: June 14, 2017 at noon

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, email dbarber@kheaa.com.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (As Amended at ARRS, August 14, 2017)

16 KAR 2:020. Occupation-based career and technical education certification.

RELATES TO: KRS 156.095, 158.070, 158.816, 160.380, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020(3), 161.028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020(3), 161.028(1)(a), and 161.030 require the Education Professional Standards Board to promulgate administrative regulations establishing standards and requirements for obtaining and maintaining a teaching certificate[that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board]. This administrative regulation establishes the qualifications for certification of teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

Section 1. (1) The Education Professional Standards Board (EPSB) shall issue and reissue certificates for occupation-based career and technical teachers[education established in this administrative regulation shall be issued and renewed for occupation-based career and technical education teachers] employed by the public schools, the Kentucky Community and Technical College System, or the Kentucky Department of Education Office of Career and Technical Education (KDE).

(2) The EPSB may issue certificates[may be issued] for any information technology, industrial education, public service, health science, or human services occupation area for which programs may be offered under the required Kentucky Academic Standards established in 704 KAR 3:303.

(3) The EPSB shall issue certificates for occupation-based career and technical teacher candidates who are employed based upon required occupational experience in the occupation area to be taught.

(4)[teachers][education][established in this administrative regulation to][shall]:

(a)[Be initially issued to][Teacher][teacher][candidates who are employed based upon required occupational experience in the occupation][subject][area to be taught; and

(b)] The EPSB shall not require a college degree for initial issuance.

Section 2. Issuance and Renewal of One (1) Year Provisional Certificates. (1) Initial issuance. The EPSB shall issue a provisional[internship] certificate to[for teaching] occupation-based career and technical teacher candidates[education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued to an applicant who has submitted a completed CA-3] for a duration period of one (1) year. The EPSB shall only issue the provisional certificate after the KDE and, if applicable, an accredited provider of an approved occupation-based educator preparation degree program recommends the teacher candidate for certification and the teacher candidate completes the requirements set forth in this Section.[upon completion of the following requirements:]

(a) For those teacher candidates who do not hold at least an associate degree in the occupation area in which the teacher candidate is seeking certification, the teacher candidate shall:[A minimum of a high school diploma or its equivalent determined by evidence of an acceptable score on the general education development test administered by an approved testing center:]

1. Demonstrate that he or she has at least a high school diploma or its equivalent;

2. Demonstrate that he or she has four (4) years of successful and appropriate occupational experience in the occupation area in which certification is sought along with:

a. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an approved occupation-based educator preparation program for the occupation to be taught; and

b. Proof that KDE confirmed the occupational experience;

3. Demonstrate that he or she meets the assessment requirements set forth in 16 KAR 6:020;

4. The teacher candidate shall answer "no" to all of the EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification pursuant to the board's authority established in KRS 161.120 if the board so chooses; and "Answer no" to the EPSB's background disclosure questions set forth in Section 4]

5. Demonstrate that a local school district, the KDE, or the Kentucky Community and Technical College System has made an offer of employment.

(b) For those teacher candidates who hold either an occupation-based degree in the occupation area in which

certification is sought or a degree from an approved occupation-based educator preparation degree program, the teacher candidates shall provide proof of that degree to the EPSB.[Four (4) years of successful and appropriate occupational experience in the area to be taught; with:

1. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited occupational preparation program for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education Office of Career and Technical Education;]

(c) The teacher candidate shall answer "no" to all of the EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification pursuant to the board's authority established in KRS 161.120 if the board so chooses;]For those teacher candidates who answer "yes" to the EPSB's background disclosure questions set forth in Section 4, the EPSB may issue provisional certificates to those teacher candidates, but the board shall retain final authority to deny the request for a certificate if the board so chooses.][The testing provisions established in 16 KAR 6:020;

(d) A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and

(e) An offer of employment from a local school district, the Kentucky Department of Education, the Department of Workforce Investment, or the Kentucky Community and Technical College System.]

(2) First renewal of one (1) year provisional certificates. The EPSB shall issue the first renewal of the one (1) year provisional certificate to a requesting teacher candidate only after the KDE and, if applicable, an accredited provider of an occupation-based educator preparation degree program recommends the renewal of the provisional certificate and the teacher candidate meets the requirements set forth in subsection (2)(b).[shall require the successful completion of:]

(a) The KDE or the accredited provider of an occupation-based educator preparation degree program shall only recommend renewal of the first provisional certificate for a teacher candidate[who does not hold an occupation-based degree in the area in which certification is sought] after that teacher candidate:[Kentucky Teacher Internship Program established in 16 KAR 7:010; and]

1. Completes six (6) semester hours of academic credit or its equivalent in professional learning from NTI in areas such as classroom management,; lesson planning and curriculum,; assessment,; academic integration of numeracy and literacy, and; instruction for students with special learning needs;

2. Completes the first year of professional learning through the NTI;1. Completes three (3) semester hours of credit in laboratory or classroom management. The teacher candidate may meet this requirement by successfully completing professional learning through the New Teacher Institute (NTI) sponsored by the KDE;

2. Completes professional learning through the NTI;]

3. Receives a recommendation by the KDE or an accredited provider of an occupation-based educator preparation program for enrollment in the Kentucky Teacher Internship Program (KTIP); and

(b) Answers[The teacher candidate shall answer] "no" to all of the EPSB's background disclosure questions set forth in Section 4(1)(a)-(f) of this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSB may still issue a statement of eligibility for those teacher candidates, but the

board shall retain final authority to deny a request for certification pursuant to the board's authority established in KRS 161.120 if the board so chooses. [The teacher candidate answers "no" to the EPSP's background disclosure questions set forth in Section 4. If the teacher candidate answers "yes" to the EPSP's background disclosure questions set forth in Section 4, the EPSP may renew provisional certificates for those teacher candidates, but the board shall retain final authority to deny the request for a certification if the board so chooses.] [Three (3) semester hours of credit in occupation-based career and technical education laboratory/classroom management. This requirement may be met by successfully completing the New Teacher Institute sponsored by the Kentucky Department of Education Office of Career and Technical Education.]

(3) Subsequent renewal of one (1) year provisional certificate. The EPSP shall issue any subsequent renewal of the one (1) year provisional certificate to a requesting teacher candidate only after the KDE or the provider of an approved **occupation-based educator [occupational] preparation degree** program recommends to the EPSP that the EPSP renew the one (1) year provisional certificate. The KDE or an approved occupation-based educator preparation **degree** program shall ensure that the teacher candidate meets the following requirements before recommending renewal [an applicant who has submitted a completed CA-3 after the successful completion of the internship shall require]:

(a) The completion of a minimum of six (6) semester hours of college credit for each renewal selected from the **[approved] degree program**; [sixty-four (64) semester-hour planned program for the preparation of teachers in information technology, industrial education, public service, health science, or human services occupations established in Section 4 of this administrative regulation; and]

(b) Documentation of completion of four (4) days of professional development as required by KRS 156.095 and 158.070; and[-]

(c) Answering [The teacher candidate shall answer] "no" to all of the EPSP's background disclosure questions set forth in Section 4(1)(a)-(f) this administrative regulation. If the teacher candidate answers "yes" to any of the questions set forth in Section 4(1)(a)-(f), the EPSP may still issue a statement of eligibility for those teacher candidates, but the board shall retain final authority to deny a request for certification pursuant to the board's authority established in KRS 161.120 if the board so chooses]. [Answers "no" to the EPSP's background disclosure questions set forth in Section 4. If the teacher candidate answers "yes" to the questions set forth in Section 4, the EPSP may renew the provisional certificates for those teacher candidates, but the board shall retain final authority to deny the request for a certification if the board so chooses.]

(4) The one (1) year provisional certificate shall be limited to five (5), one (1) year renewals for a total validity period of six (6) years. **These renewals may be consecutive or nonconsecutive, [which do not need to be consecutive.]** [Credit granted by a regionally or nationally accredited postsecondary institution for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisional certificate renewal requirements.]

(5) The one (1) year provisional certificate shall be limited to nine (9), one (1) year renewals for a total validity period of ten (10) years, which do not need to be consecutive.

(6) Upon completion of the sixty-four (64) hour planned program established in Section 4 of this administrative regulation, the teacher shall:

(a) receive the professional certificate established in Section 3 of this administrative regulation; and

(b) Adhere to the subsequent renewal requirements established in Section 3(3) of this administrative regulation.]

Section 3. Issuance and Renewal of the Professional Certificate. (1) [Initial] Issuance. The EPSP shall issue a professional certificate pursuant to this administrative regulation [for teaching occupation-based career and technical education, valid

for teaching only the subject or subjects stated on the face of the certificate, shall be issued] for a duration period of five (5) years [one (1) year] to a requesting teacher candidate only after the KDE and, if applicable, a provider of an approved occupation-based educator preparation **degree** program recommends that the EPSP issue the professional certificate. Neither the KDE nor the provider of the approved occupation-based **educator** preparation **degree** program shall recommend issuance of the professional certificate until the teacher candidate has met [an applicant who has submitted a completed CA-3 upon completion of] the following requirements:

(a) The teacher candidate receives an occupation-based degree or an **approved** occupation-based educator preparation degree; [Compliance with Section 2(1) of this administrative regulation; and]

(b) The teacher candidate completes the two (2) years professional learning through NTI sponsored by KDE; and [The completion of a planned program consisting of a minimum of sixty-four (64) semester hours of college credit established in Section 4 of this administrative regulation.]

(c) The teacher candidate successfully completes KTIP.

(2) [First] Renewal. The EPSP shall renew the professional certificate in accordance with 16 KAR 4:060. [(a) The first renewal shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010.

(b) Upon meeting the requirements established in paragraph (a) of this subsection, the teacher shall receive the professional certificate valid for an additional four (4) years.

(c) An occupation-based career and technical education teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial professional certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the professional certificate.

(3) Subsequent renewal. The professional certificate shall be renewed for subsequent five (5) year periods upon completion of:

(a) Three (3) years of teaching or occupational experience in the occupational specialty; or

(b) Six (6) semester hours of college credit related to the certification area.]

Section 4. Disclosure of Background Information. [The planned program for occupation-based career and technical education teachers shall:] (1) Teachers and teacher candidates shall disclose certain background information to the EPSP whenever those teachers and teacher candidates apply for the issuance and renewal of the provisional certificate and the professional certificate by answering the following questions: [Include a minimum of sixty-four (64) semester hours of college credit with at least twenty-four (24) semester hours in academic and professional education preparation during the first four (4) years of certificate validity:]

(a) "Have you ever had a professional certificate, license, credential, or any document issued for practice denied, suspended, revoked, or voluntarily surrendered? If you have had a professional certificate, license, credential, or any other document issued for practice initially denied by a licensing body, but later issued, you must answer "yes."";

(b) "Have you ever been suspended or discharged from any employment or military service because of allegations of misconduct?";

(c) "Have you ever resigned, entered into a settlement agreement, or otherwise left employment as a result of allegations of misconduct?";

(d) "Is any action now pending against you for alleged misconduct in any school district, court, or before any educator licensing agency?";

(e) "Have you ever been convicted of or entered a guilty plea, an "Alford" plea, or a plea of nolo contendere (no contest) to a felony or misdemeanor, even if adjudication of the sentence was withheld in Kentucky or any other state? Minor traffic violations should not be reported. Convictions for driving while intoxicated

(DWI) or driving under the influence of alcohol or other drugs (DUI) must be reported.”;

(f) “Do you have any criminal charges pending against you?”; **and**

(g) “If you answered affirmatively to any of the questions in this Section, has the EPSB previously reviewed the information?”.

(2) The EPSB shall provide teachers and teacher candidates with the opportunity to submit a narrative to the board to consider before the board approves the request for issuance or renewal of a provisional certificate or a professional certificate. The teacher or teacher candidate may include in their narrative any dates, locations, school systems, court records, or any other information the teacher or teacher candidate would like the board to consider. [Utilize the proficiency evaluation established in 16 KAR 5:030;

(3) Be based upon the experienced teacher standards established in 16 KAR 1:010;

(4) Meet the specialty program association standards established in 16 KAR 5:010; and

(5) Be accredited by the Education Professional Standards Board using the applicable standards and procedures established in 16 KAR 5:010.]

Section 5. **(1) Effective July [August]1, 2018, the EPSB shall not issue a professional certificate to a teacher candidate who does not have at least an associate degree in the area in which the teacher candidate is seeking certification, and who has not completed the two (2) year professional learning through NTI sponsored by KDE unless that teacher candidate holds a valid, unexpired provisional certificate and was admitted into an approved occupation-based educator preparation program prior to July 1, 2018.**

(2) For a teacher candidate who holds a provisional certificate and was admitted into an approved occupation-based educator preparation program prior to July 1, 2018, the EPSB shall renew that teacher candidate's provisional certificate in accordance with the laws and administrative regulations in effect at the time the first provisional certificate was issued as required by KRS 161.020.

(3) For a teacher candidate who was admitted into an approved occupation-based educator preparation program prior to July 1, 2018, the EPSB shall issue and renew that teacher candidate's professional certificate in accordance with the laws and administrative regulations in effect at the time the teacher candidate's first provisional certificate was issued. [Effective August 1, 2018, the EPSB shall not issue provisional or professional certificates to those teacher candidates who do not have at least an associates degree in the area which the teacher candidate is seeking certification, and who have not completed the two (2) year professional learning through NTI sponsored by KDE.]

Section 6. Information Technology and Computer Science Teachers. (1) A teacher shall possess one (1) of the following credentials to instruct in the field of information technology or computer science:

(a) Provisional certificate established in Section 2 of this administrative regulation;

(b) Professional certificate established in Section 3 of this administrative regulation;

(c) Computer information systems certificate established in 16 KAR 2:010;

(d) Computer science endorsement established in 16 KAR 2:010; or

(e) Instructional computer technology endorsement established in 16 KAR 2:010.

(2) If a qualified teacher is not available for the position of information technology teacher, as attested to by the local school superintendent or the Associate Commissioner of the Kentucky Department of Education Office of Career and Technical Education, a one (1) year probationary certificate may be issued under the requirements established in 16 KAR 2:190. [Section 6. Incorporation by Reference. (1) "CA-3", 3/15, is

incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.]

ROB AKERS, Board Chair

APPROVED BY AGENCY: July 6, 2017

FILED WITH LRC: July 7, 2017 at 2 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (As Amended at ARRS, August 14, 2017)

16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048[(7)]

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that the **Education[Educational]** Professional Standards Board (EPSB)[te] promulgate administrative regulations setting standards for **educator preparation programs**[approval of an educator preparation institution that offers a preparation program corresponding to a particular certificate]. KRS 161.030(1) requires that the board[te] promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126. This administrative regulation establishes the standards for admission to an educator preparation program that is required for certification.

Section 1. Selection and Admission to Educator Preparation Programs. (1) ~~Each~~[In addition to the National Council for Accreditation of Teacher Education standards incorporated by reference in 16 KAR 5:010, each] accredited provider of an approved program of educator preparation[educator preparation institution] shall **adhere to/develop** minimum standards for admission to its[initial] certification educator preparation programs[,] including ~~those~~[university-based alternative] programs established pursuant to KRS 161.048[(7)], in accordance with this section.

(2) Admission to an approved undergraduate initial certification education preparation program, **including those programs established pursuant to KRS 161.048(2), 161.048(3), 161.048(6), and 161.048(8), [including those programs established pursuant to KRS 161.048(1), KRS 161.048(2), KRS 161.048(5), KRS 161.048(8)]** shall require the following:

(a) 1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, **in accordance with the following[:]**

a. Grade point average (GPA) shall be calculated by beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed; and[:]

b. If it is necessary to go back further than two (2) semesters then the courses in the third semester included in the calculation shall be chosen based on the highest grades earned during that third semester; and

(b) Successful completion of the following pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum score:

1. "Praxis Core Academic Skills for Educators (CASE): Reading (5712)" - 156; [Until August 31, 2014:

a.(i) "Pre-Professional Skills Test: Mathematics (0730)" -174;

or

- (iii) "Computerized Pre-Professional Skills Test: Mathematics (5730)" - 174;
- b.(i) "Pre-Professional Skills Test: Reading (0710)" - 176; or
- (ii) "Computerized Pre-Professional Skills Test: Reading (5710)" - 176; and
- c.(i) "Pre-Professional Skills Test: Writing (0720)" - 174; or
- (ii) "Computerized Pre-Professional Skills Test: Writing (5720)" - 174.

2. [Beginning September 1, 2014:

- a. "Praxis Core Academic Skills for Educators (CASE): Reading (5712)" - 156;
- b. "Praxis Core Academic Skills for Educators (CASE): Writing (5722)" - 162; and
- 3.[c.] "Praxis Core Academic Skills for Educators (CASE): Mathematics (5732)" - 150.

(3) Admission to an approved[a] graduate level initial certification educator preparation program[, including an educator preparation program established pursuant to KRS 161.048(7).] **shall require the following:**

(a) 1. A bachelor's degree or advanced degree awarded by a regionally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(b) 1. Successful completion of the pre-professional skills assessments in subsection (2)(b) of this section; or

2. Successful completion of the Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding scores on the corresponding sections:

a. Verbal reasoning - 150[(i) Verbal Reasoning taken prior to August 1, 2011 - 450; or

(ii) Verbal Reasoning taken after August 1, 2011 - 150];

b. Quantitative Reasoning - 143[(i) Quantitative Reasoning taken prior to August 1, 2011 - 490; or

(ii) Quantitative Reasoning taken after August 1, 2011 - 143]; and

c. Analytical Writing - 4.0.

(4) **Admission to an advanced certification educator preparation program shall require the following:**

(a)1. A statement of eligibility or an initial certificate earned by completion of an approved program through an approved educator preparation provider in Kentucky; or

2. For out-of-state applicants, a statement of eligibility or an initial certificate issued by EPSB and earned by completion of a program through an approved educator preparation provider; and

(b)1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(c)1. Completion of requirements for the administrative certificate as established in Title 16, Chapter 3; or

2. Completion of requirements for the certificate as established in 16 KAR 2:060, 16 KAR 2:070, and 16 KAR 2:090.

(5) Each accredited provider of an approved program of educator preparation[accredited educator preparation institution] shall have a formal application procedure for admission ~~that~~[to an initial teacher preparation program, which] shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;
2. Communication;
3. Creativity; and
4. Collaboration;

(b) Evidence that the applicant has reviewed the:

1. ~~The~~ Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020[; and

2. The character and fitness questionnaire contained in Section III of the TC-1 incorporated by reference in 16 KAR 2:010]; and

(c) A method to allow the applicant to demonstrate that the

applicant understands professional dispositions expected of professional educators.

~~(6) [(5)]~~ The educator preparation program[Undergraduate students] shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

~~(7) [(6)]~~ The educator preparation provider[program] shall maintain electronic records that document that all students[admitted after September 1, 2012.] meet the requirements established in [subsection (2) of] this section.

Section 2. Selection and Admission to an Approved Educator Preparation Program for Occupation-Based Career and Technical Education. (1) Admission to an approved program of preparation for occupation-based career and technical education that results in certification pursuant to 16 KAR 2:020 shall require:

(a) A minimum of a high school diploma or equivalency exam;~~;~~

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, **which shall include**[**which includes**]:

1. At least two (2) years of occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an approved program of preparation for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education, Office of Career and Technical Education;

(c) The assessment provisions established in 16 KAR 6:020; and

(d) An offer of employment from a state or local technology center, or a school district.

(2) Each[accredited] provider of an approved **occupation-based**[**program of**] educator preparation **program** shall have a formal application procedure for admission that shall include the following:

(a) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(b) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(3) The educator preparation provider shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(4) The educator preparation provider[program] shall maintain electronic records that document that all students meet the requirements established in subsections (1) and [(subsection) (2) of] this section.

(5) A provider of approved educator preparation programs shall provide notice to the EPSB which candidates it has admitted to an approved program of educator preparation within six (6) months of the candidate's admission.

(6) Failure of an approved educator preparation provider to provide EPSB with notice of each candidate it admitted to an approved program of preparation in accordance with this section may result in action against the provider's accreditation status.

Section 3. Assessment Recency. A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the assessment administration date.

Section 4. Annual Report. (1) Each educator preparation provider[unit] shall submit an electronic report annually to the EPSB[Education Professional Standards Board] that includes the following program data on each candidate admitted to educator preparation programs:

(a) EPSB[Education Professional Standards Board] Person Identifier;

(b) Student School Identification number;

(c) Social Security number;

(d) Full name;

- (e) Birth date;
- (f) Reported ethnicity;
- (g) Reported gender;
- (h) Email address;
- (i) Present home mailing address;
- (j) Permanent home mailing address;
- (k) Phone number;
- (l) Admission date;
- (m) Total number of credit hours prior to admission to the provider's[institution's] educator preparation program;
- (n) Total number of credit hours in educator preparation courses completed prior to admission to the provider's[institution's] educator preparation program;
- (o) Grade point average at admission;
- (p) Current program enrollment status;
- (q) Program completion date;
- (r) Grade point average at program completion;
- (s) Academic major at program completion; and
- (t) Academic minor or minors at program completion, if applicable.

(2) The report shall be submitted in the following manner:

(a) The provider[institution] shall electronically submit all data identified in subsection (1) to the EPSB[Education Professional Standards Board]; and

(b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the EPSB[Director of the Division of Educator Preparation] that all required information has been entered.

(3) The preparation program shall exit any candidate who has not been enrolled in at least one (1) course required for program completion within the last twelve (12)[eighteen (18)] months.

(4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status

[pursuant to 16 KAR 5:040, Section 24].

ROB AKERS, Board Chair

APPROVED BY AGENCY: July 6, 2017

FILED WITH LRC: July 7, 2017 at 2 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

STATE BOARD OF ELECTIONS (As Amended at ARRS, August 14, 2017)

31 KAR 4:010. Voter identification cards.

RELATES TO: KRS 117.227

STATUTORY AUTHORITY: KRS 117.015

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 117.015 authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.227 requires election officers to confirm the identity of each voter and list the method of identification. This administrative regulation establishes a procedure for documenting the confirmation of identity on precinct voter rosters.**~~To define the forms of identification that are acceptable in confirming the identity of voters on election day, and to provide uniformity of identification standards throughout the state governed by KRS 117.227. This administrative regulation is required to establish a procedure for documenting the confirmation of identity on precinct voter rosters].~~

Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, **the following shall be acceptable for confirmation of a voter's identity.** Any identification card that:

(1)(a) Bears both the picture and signature of the voter; **or**
(b)], or any identification card that] Has been issued by the county; **and**

(2)[which] Has been approved in writing by the State Board of Elections; **shall be acceptable for confirmation of the voter's**

identity].

Section 2. The method of identification used shall be recorded on the precinct voter roster by use of the following codes:

(1) Personal acquaintance - "PA";

(2) Motor vehicle operator's license - "DL";

(3) Social Security card - "SS";

(4) Credit card - "CC";

(5) Identification card with picture and signature, **United States government-issued identification card and Kentucky state government-issued[~~state government-issued~~]** identification card with picture (other identification) - "OI";

Section 3. The election officer confirming the identity shall enter his initials on the precinct voter roster in lieu of a signature.

ALISON LUNDERGAN GRIMES, Secretary of State

Chair of State Board of Elections

APPROVED BY AGENCY: May 16, 2017

FILED WITH LRC: May 30, 2017 at 3 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email Lindsay.thurston@ky.gov.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (As Amended at ARRS, August 14, 2017)

201 KAR 2:076.~~[Parenteral pharmaceutical]~~ Compounding.

RELATES TO: KRS 217.055(2), 217.065(7), **218A.010(13)(a)],**
315.020(1), 315.035(6), 315.0351, 315.191(1)(a), (g)

STATUTORY AUTHORITY: KRS 315.020(1), ~~[(2)],~~ **315.035(6),**
315.0351, **315.065(1), (2),** 315.191(1)(a), (g)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 315.020(1) requires the owner of a pharmacy who is not a pharmacist to place a pharmacist in charge of the owner's pharmacy. KRS 315.035(6) authorizes the board to promulgate administrative regulations[Kentucky Board of Pharmacy is responsible] to assure[insure] minimum standards of practice of [parenteral] compounding by pharmacies and pharmacists, and[. The board is also responsible] to assure[insure] the safety of all products provided to the citizens of the Commonwealth. KRS 315.191(1) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes the requirements for compounding non-sterile and sterile preparations.**

Section 1. (1) A policy and procedure manual for **non-sterile and sterile[~~parenteral pharmaceutical~~]** compounding shall be readily available at a pharmacy for inspection purposes.

(2) A copy of the manual shall be made available to the board upon request.~~[The manual shall include policies and procedures for:~~

- (1) Oncology drugs;
- (2) Disposal of unused supplies and medications;
- (3) Drug destruction and return;
- (4) Drug dispensing;
- (5) Drug labeling;
- (6) Storage;
- (7) Duties and qualifications for staff;
- (8) Equipment;
- (9) Handling of hazardous wastes;
- (10) Investigation drug protocol;
- (11) Safety;
- (12) Recordkeeping;
- (13) Reference material;
- (14) Sanitation;
- (15) Security
- (16) Transportation; and

- (17) Quality assurance, as relates to:
- (a) Recall procedures;
 - (b) Storage and dating;
 - (c) Educational procedures for staff and patient;
 - (d) Sterile procedures, to include routine maintenance and hood certification; and, if necessary,
 - (e) Sterile testing of end products, operator procedures, and environment.]
- (3) The manual shall be reviewed and revised on an annual basis.

Section 2. (1) Effective January 1, 2018, all non-sterile compounded preparations shall be compounded pursuant to United States Pharmacopeia (USP) 795, unless specified portions submitted by a pharmacist have been waived by the Board.

(2) Effective January 1, 2018, all sterile compounded preparations shall be compounded pursuant to USP 797, unless specified portions submitted by a pharmacist have been waived by the Board.

(3) After January 1, 2018, all written waiver requests submitted by a pharmacist shall be considered by the Board at its next regularly scheduled meeting.

(4) The board, upon a showing of good cause and in balancing the best interest of the public health, safety and welfare, may waive the requirement of any specified portion of USP 795 or 797. [The following physical requirements are in addition to other requirements set forth in KRS 247.055 and 315.020:

(1) The licensed pharmacy shall have a designated area for preparing compounded parenteral pharmaceuticals. This area shall be designed to withstand routine disinfecting procedures and shall be kept free of particulate generators, e.g., corrugated cardboard containers. This area shall be designed to avoid unnecessary traffic and airflow disturbances. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.

(2) The minimum equipment shall be:

- (a) Laminar airflow hood or Class 100 clean room;
- (b) Sink with hot and cold running water which is convenient to the compounding area;
- (c) Appropriate disposal containers for used needles, syringes, and if applicable, cytotoxic and hazardous wastes from preparation of said agents;
- (d) A Class II vertical flow biological safety cabinet, if oncology agents are prepared;
- (e) Refrigerator or freezer with a thermometer; and
- (f) A temperature controlled delivery container (not required if delivered in the same facility).

(3) The minimum supplies shall be:

- (a) Disposable needles, syringes, and other supplies needed for aseptic parenteral compounding;
- (b) Disinfectant cleaning solutions;
- (c) Hand washing agent with bactericidal action;
- (d) Disposable, lint free towels or equivalent;
- (e) Appropriate filters and filtration equipment;
- (f) Oncology drug spill kit; and
- (g) Disposable gowns, and sterile disposable gloves.

(4) This area of the pharmacy shall not be accessible to the public and no one shall have access without supervision of the pharmacist.

(5) The pharmacy shall have current reference materials related to sterile products.]

Section 3. (1) A facility that compounds non-sterile or sterile preparations [Each licensed pharmacy] shall be managed by a pharmacist-in-charge (PIC) [pharmacist] licensed to practice pharmacy in the Commonwealth and who is knowledgeable in the specialized functions of preparing and dispensing compounded non-sterile and [.] sterile preparations [pharmaceuticals], including the principles of aseptic technique and quality assurance.

(2) The PIC [pharmacist-in-charge] shall be responsible for the: purchasing, storage, compounding, repackaging, dispensing, [and]

distribution of all drugs and preparations [pharmaceuticals]. The pharmacist shall also be responsible for the] development and continuing review of all policies and procedures, training manuals, [and the] quality assurance programs, and [as well as] participation in those aspects of the facility's patient care evaluation program relating to pharmaceutical material utilization and effectiveness.

(3) The PIC [pharmacist-in-charge] may be assisted by additional pharmacy personnel adequately trained, to the satisfaction of the PIC, in this area of practice and for each product they will be compounding. [A pharmacist shall be accessible at all times at each licensed facility to respond to patients' and other health professionals' questions and needs.]

Section 4. (1) The pharmacist shall receive a written, electronic, facsimile, or verbal prescription, or medical [direct copy] order from a prescriber before dispensing any compounded, non-sterile or sterile preparation [parenteral product]. These prescriptions or medical [direct copy] orders shall contain the following:

- (a) Patient's name, and species if not human;
- (b) Patient's address on controlled substances prescriptions or location (room number);
- (c) Drug name and strength;
- (d) Directions for use;
- (e) Date;
- (f) Authorized prescriber's name;
- (g) Prescriber's address and DEA number, if applicable;
- (h) Refill or end date instructions, if applicable; and
- (i) Dispensing quantity, if applicable.

(2) A pharmacy generated patient profile shall be maintained separate from the prescription file. The patient profile shall be maintained under the control of the PIC [pharmacist-in-charge] for a period of two (2) years following the last dispensing activity. In addition, a medication administration record (MAR) as part of the institutional [medical] record shall be retained for a period of five (5) years from date of the patient's discharge from the facility, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer. Supplemental records may also be employed as necessary. The patient profile shall contain:

- (a) Patient's name;
- (b) Name of compounded preparation [Sterile product] dispensed;
- (c) Date dispensed;
- (d) Drug content and quantity; and
- (e) Patient's directions.

(3) Each compounded preparation [sterile pharmaceutical] dispensed to patients shall be labeled with the following information:

- (a) Name, address, and telephone number of the licensed pharmacy, if product will leave the premises;
- (b) Date;
- (c) Identifying number;
- (d) Patient's full name;
- (e) Name of each drug, strength, and amount;
- (f) Directions for use, including infusion rate;
- (g) Required controlled substances transfer warnings, where applicable;

- (h) Beyond use [Expiration] date;
- (i) Identity of dispensing pharmacist;
- (j) Storage requirements, when applicable; and
- (k) Auxiliary labels, when applicable.

(4) The PIC [pharmacist-in-charge] shall maintain access to and submit, as appropriate, such records and reports as are required to ensure [insure] the patient's health, safety, and welfare. Records shall be readily available, maintained for two (2) years at a facility not computerized, but for five (5) years at a facility utilizing computerized recordkeeping, and subject to inspection by the Board of Pharmacy or its agents. These shall include the following:

- (a) Patient profile;
- (b) Purchase records;
- (c) Biennial controlled substances inventories;
- (d) Policy and procedures manual;

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(e) Policies and procedures for hazardous[~~eytotoxic~~] wastes, if applicable;

(f) Quality assurance records; and

(g) Such other records and reports as may be required by law and rules and administrative regulations of the Kentucky Board of Pharmacy.

(5) Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's records. Release of this information shall be in accordance with federal and state laws.

(6)[(5)] The PIC[~~pharmacist in charge~~] shall be responsible for the environmental control of all products shipped. Any compounded[~~;~~] product[~~sterile pharmaceutical~~] that is frozen or requires refrigeration shall be shipped or delivered to a patient in appropriate temperature controlled delivery containers, if the product leaves the premises.

(7)[(6)] The PIC[~~pharmacist in charge~~] shall be responsible for assuring that there is a system for the disposal of hazardous waste in a manner that does not endanger the public health. [(7) A quality assurance program documented by the pharmacist shall be available to provide accountability for the manufacturing and distribution of sterile parenteral products.]

Section 5. Hazardous Drugs. (1) Effective January 1, 2018, all non-sterile preparations that contain hazardous substances shall be compounded pursuant to USP[Chapter] 795.

(2) Effective January 1, 2018, all sterile compounded preparations that contain hazardous substances shall be compounded pursuant to USP[Chapter] 797. [Licensed pharmacies that prepare oncology agents shall meet the following additional requirements in order to insure the protection of the personnel involved:

(1) All oncology agents shall be compounded in a vertical flow; Class II, biological safety cabinet, and other products may be compounded in this cabinet;

(2) Protective apparel shall be worn by personnel compounding oncology drugs, and this shall include disposable gloves and gowns;

(3) Proper aseptic and safety techniques shall be used by personnel compounding oncology agents;

(4) Appropriate disposable procedures for cytotoxic waste shall be developed that comply with applicable state and federal regulations;

(5) Written procedures for handling both major and minor spills of cytotoxic agents shall be developed; and

(6) Prepared doses of oncology drugs shall be dispensed, shipped, or delivered in a manner to minimize the risk of accidental rupture of the primary container and labeled with a distinctive cautionary label as being hazardous.

Section 6. Violation of any provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121. [There shall be a documented, ongoing quality control program that monitors personnel performance, equipment, and facilities. Quality assurance procedures, at a minimum, shall include:

(1) Recall procedures;

(2) Storage and dating;

(3) Educational procedures for staff;

(4) Sterile procedures;

(5) Hood or clean room annual certification by an independent contractor in accordance with federal standard 209B and NSF standard No. 49;

(6) Prefilter cleaning and replacement when appropriate;

(7) Justification of the chosen expiration dates for compounded parenteral products; and

(8) Documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits.]

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

(a) USP 795, Revision Bulletin, Official January 1, 2014; and

(b) USP 797, Revision Bulletin, Official June 1, 2008.

(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. through 4:30 p.m.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 4 p.m.

CONTACT PERSON: Steve Hart, 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, email Steve.Hart@ky.gov.

GENERAL GOVERNMENT CABINET Board of Alcohol and Drug Counselors (As Amended at ARRS, August 14, 2017)

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

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

STATUTORY AUTHORITY: KRS 309.0813(1)

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

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

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

(a) Medical problems;

(b) Maternity or paternity;

(c) Education;

(d) Military service; or

(e) Family or personal issues.

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

(a) Current home address and telephone number;

(b) Reason for request;

(c) Final date of employment in the alcohol and drug field;

(d) Anticipated date of return to employment in the alcohol and drug field; and

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

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

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

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

(2) A counselor on voluntary inactive status shall not practice or use the initials of a counselor such as, [(e.g.) CADC, LCADCA, or LCADC{ }].

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

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

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

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

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

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

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

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

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

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

(2) The board may grant (1) A credential holder may be granted retired status **to a credential holder submitting a written request** if that individual:

- (a) Is at least sixty-five (65) years old, or suffers a medical disability or illness that renders the credential holder unable to practice alcohol and drug counseling; and
- (b) Has retired from **the** practice of alcohol and drug counseling in all jurisdictions and is not conducting an active practice in any jurisdiction.

(3)(2) A credential holder ~~who has been~~ granted retired status **by the board** shall:

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

(b) ;

(3) The credential holder shall Be relieved of the obligation to pay the renewal **and penalty fees**~~fee~~ under 201 KAR 35:020, **Section 4 and the inactive status fees under 201 KAR 35:020, Section 7; and**

(c) ;

(4) A retired credential holder shall Use the designation "-R" at the end of the acronym for the appropriate credential such as, RPSS-R, CADC-R, or LCADC-R.

(4)(5) A credential holder who retires and later seeks reinstatement shall ~~be required to~~ meet applicable current initial registration, certification, or licensure requirements **as provided in**

KRS 309.083 through 309.0833, 201 KAR 35:025, 35:050, and 35:070.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: June 14, 2017

FILED WITH LRC: June 14, 2017 at 11 a.m.

CONTACT PERSON: Kelly Wells, Board Administrator,
Department of Professional Licensing, 911 Leawood Drive,
Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 14, 2017)**

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.370, 150.399, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.175(7) and (9) authorize the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands the department has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer **requirements**~~regulations~~ on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(3) "Dry land set" means a trap that is set so that no portion of the trap touches the water of a stream, river, pond, lake, wetland, or other water course.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Upland bird" means a ruffed grouse or northern bobwhite.

(6) "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.

(7) "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. General Requirements on a Wildlife Management Area or Outdoor Recreation Area. (1) Except as established in subsection (2) of this section, a person hunting any species during daylight hours, and any person accompanying that hunter, shall comply with hunter orange requirements as established in 301 KAR 2:132, 2:172, and 2:300.

(2) The hunter orange clothing requirement in subsection (1) of

this section shall not apply to a person:

(a) Hunting waterfowl or doves as established in 301 KAR 2:225; or

(b) Hunting waterfowl as established in 301 KAR 2:221, 2:222, or 2:226.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

(5) A body-gripping trap used as a dry land set shall have a maximum inside jaw spread of five and one-quarter (5 1/4) inches measured:

(a) In the center of the trap; and

(b) In the unset position.

(6) Dry land sets shall not be placed closer than ten (10) feet apart.

(7) Prior to trapping on a WMA or Outdoor Recreation Area, a person shall complete for each area a KDFWR Public Area Trapping Registration Form obtained from a department office or the department's Web site at fw.ky.gov.

Section 4. Exceptions on Wildlife Management Areas and Outdoor Recreation Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(3) Cane Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(4) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) With the exception of the statewide squirrel season, the area shall be closed to all other small game and furbearer hunting.

(5) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Rabbit season shall be closed after December 31.

(c) Ruffed grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation. All other small game hunting shall be closed until 2:00 p.m. on upland bird quota hunt dates.

(d) Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants of either sex.

(e) Quota fox hunting field trials.

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the

department during the event; and

b. Return the laminated badge at the close of the event.

(6) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.

(7) Dix River WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(8) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(9) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants of either sex.

(d) The area shall be closed to ruffed grouse hunting and trapping.

(10) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(11) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Lake Cumberland WMA.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Mill Creek WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall hunt coyotes during daylight hours only.

(14) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August; or

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(15) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(16) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or
3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(18) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(19) Peabody WMA.

(a) Northern bobwhite hunting on the Sinclair Unit shall:

1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and
2. Be closed on Sunday.

(b) A northern bobwhite hunter on the Sinclair Unit shall:

1. Check in and check out at the Peabody WMA office; and
2. Visibly display a hunting log on the dashboard of the hunter's vehicle.

(20) Pennyryle Forest WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(21) Pioneer Weapons WMA.

(a) A person shall not hunt with a breech-loading firearm.

(b) A person shall hunt coyotes during daylight hours only.

(22) Redbird WMA. A person shall hunt coyotes during daylight hours only.

(23) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

(b) The remainder of the WMA shall be open under statewide requirements.

(24) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(25) Tradewater WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(26) West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10.

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;
2. Operate a vehicle on Tract 6 from February 1 through April 16; or
3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(27) Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November;

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December; and

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the first~~second~~ Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately

following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear hunter orange clothing as established in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) pheasants of either sex, except there shall be a daily bag limit of three (3) pheasants of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall not apply:

1. More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and
2. As a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022 prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts.

(1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the:

(a) Fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) Tuesday following the fourth Saturday in November;

(c) Tuesday following the third Saturday in December;

(d) First Saturday in January;

(e) Second Saturday in January; and

(f) Tuesday following the third Saturday in January.

(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the:

(a) Wednesday following the first Saturday in November;

(b) Third Sunday in November;

(c) Third Saturday in December; and

(d) Fourth Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) ruffed grouse daily; and

(b) May take woodcock. Woodcock shall only be taken pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall not apply:

(a) More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) As a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide or apply online at fw.ky.gov~~[from a touch-tone phone]~~ between September 1 and September 30;

(b) Enter each applicant's Social Security number;

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be

required to show a:

- (a) Department-issued quota hunt permit;
- (b) Valid Kentucky hunting license or proof of exemption; and
- (c) Hunter education card, if required pursuant to 301 KAR 2:185.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A person who is ineligible to apply for a quota hunt pursuant to subsection (5) of this section shall maintain all preference points that were accrued in other quota hunts.

(7) A youth shall only apply as part of a party that has at least one (1) adult.

(8) ~~(7)~~ The department shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(9) ~~(8)~~ A quota hunt applicant who is not selected and who applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(10) ~~(9)~~ A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(11) ~~(10)~~ A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned, except as established in subsection (6) of this section.

Section 8. Dog Training Areas on Wildlife Management Areas.

(1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The conditions established in this subsection shall apply for each dog training area on a WMA.

(a) All northern bobwhite quail to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area.

(b) Dog training areas shall remain open to all other legal WMA uses.

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding.

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for:

- 1. May 15 through August 15;
- 2. The youth statewide turkey season; and
- 3. The statewide turkey season.

(e) Released northern bobwhite quail with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

- 1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite quail are present; and
- 2. Then place released birds in the training area.

Section 9. General Requirements on Federally Owned Areas. (1) Season dates, bag limits, and other requirements of 301 KAR 2:251[,] and 2:050 shall apply except as otherwise established in this administrative regulation.

(2) Hunter orange requirements established in Section 3 of this administrative regulation shall apply to a person hunting or trapping on federal areas referenced in this section.

(3) A person shall:

- (a) Obtain permission from the landowner before hunting;
- (b) Not hunt except on assigned dates and in assigned areas;

and

(c) Comply with all requirements established by the agency controlling the area.

Section 10. Exceptions on Specific Federally Owned Areas. (1) If hunting is not prohibited by other area priorities, Fort Campbell, Fort Knox, Land Between the Lakes National Recreation Area, Bluegrass Army Depot, and Reelfoot National Wildlife Refuge may allow hunting if in compliance with 301 KAR 2:122 and 2:251 for:

(a) Squirrels, from June 1 through June 14;

(b) Northern bobwhite and rabbit, no earlier than November 1 nor later than the last day of February;

(c) Furbearers, no earlier than October 1 nor later than the last day of February;

(d) Frogs, year round; or

(e) Crows, for a maximum of 124 days between September 1 and the last day of February.

(2) A person shall hunt coyotes during daylight hours only on lands managed by:

(a) Daniel Boone National Forest;

(b) George Washington and Jefferson National Forests;

(c) Land Between the Lakes National Recreation Area;

(d) Clarks River National Wildlife Refuge; and

(e) Reelfoot National Wildlife Refuge.

(3) Fort Knox shall not allow more than thirty (30) days of ruffed grouse hunting between October 1 and the last day of February.

(4) On Land Between the Lakes National Recreation Area, a person hunting the species listed in this administrative regulation shall not use:

(a) Crossbows;

(b) Shotgun slugs or shot larger than BB; or

(c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

(5) Big South Fork National River and Recreation Area.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person hunting coyotes shall comply with any federal requirements established by the National Park Service.

Section 11. Incorporation by Reference. (1) "KDFWR Public Area Trapping Registration Form", 2016 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: June 12, 2017

FILED WITH LRC: June 14, 2017 at 9 a.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, August 14, 2017)**

**401 KAR 8:020. Public and semipublic water systems;
submetering; general provisions.**

RELATES TO: KRS 211.350-211.392, 223.160-223.220, 224.10-100, 224.10-110, 224.16-050, 369, 40 C.F.R. 141, 142.14, 142.15, 142.16, 142.20, 142.21, 142.40-142.65

STATUTORY AUTHORITY: KRS 223.200, 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.3, 141.31, 141.75, 142.14, 142.15, 142.20, 142.21, 142.40-142.65, 42 U.S.C. 300f-300j-26

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the general provisions for regulating public and semipublic water supplies.

Section 1. A public or semipublic water system shall be subject to the requirements of 401 KAR Chapter 8, except those exempted in 40 C.F.R. 141 and 142[141-3].

Section 2. Submetering. (1) A property using a submeter[submeters] as defined by 401 KAR 8:010[(26)] shall not be considered a public water system as defined by 40 C.F.R. 141.2 and, except for this administrative regulation and the emergency authority provisions established in Section 1431 of the federal Safe Drinking Water Act, shall be exempt from the requirements of 401 KAR Chapter 8.

(2)(a) A property using a submeter[submeters] as defined by 401 KAR 8:010[(26)] and exempt from the requirements of 401 KAR Chapter 8 shall:

1. Receive all of its water from a public water system and shall not change the quality of water provided to customers;

2. Be located on property owned by a single person, entity, individual, or a co-op or condominium association of property owners;

3. Not be regulated as a water utility by the Kentucky Public Service Commission; and

4. Not charge tenants an amount that exceeds tenants' share of the actual amount charged by the public water system to the owner or operator of a property using a submetered system, based on the tenants' actual water usage in proportion to the total amount of water used for the entire submetered property.

(b) The owner or operator of a property using a submetered system shall designate a person or organization as the owner or operator of the submetered system and shall provide the name, address, and phone number of the designated owner or operator upon request by the cabinet.

(c) The owner or operator of a property using a submetered system shall certify to the cabinet in writing that the:

1. Submetered system does not have any cross connections; and

2. Applicable provisions of 815 KAR 20:120 have been met.

(3) An advisory received by the owner or operator pursuant to Section 3(9) of this administrative regulation shall be disseminated to property tenants in the manner established in Section 3(10) of this administrative regulation.

(4) Public notices and consumer confidence reports received by the owner or operator pursuant to 401 KAR 8:075 shall be disseminated to property tenants in the next billing period.

Section 3[2]. (1) Public and semipublic water systems. A person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR Chapter 8 and 40 C.F.R. 141. A water supply system constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR Chapter 8, or the system obtains a variance or exemption from those standards in accordance with 40 C.F.R. 141.

(2)(a) A cross-connection shall be prohibited.

(b) The use of automatic devices, such as a reduced pressure zone back flow preventer and a vacuum breaker, may be approved to protect public health, in lieu of air gap separation.

(c) A combination of air gap separation and an automatic device shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health.

(d) Every public water system shall determine if or where a cross-connection exists and shall immediately eliminate it.

(3) A bypass shall not be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions for its use.

(4) An auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency condition that necessitates the intake.

(5) The plumbing system serving the purification plant and auxiliary facilities shall discharge to a sewer system if available.

(a) If a sewer is not available, the connection shall be made to a sewage disposal facility approved pursuant to KRS Chapter 211.350 through 211.392 or 224.16-050.

(b) There shall not be connections between the sewer system and a filter backwash, filter-to-waste drain, or clearwell overflow line, unless an air gap is provided between the drain and overflow line and the sanitary storm sewer or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow line.

(6) The owner or operator of a public water system shall operate and maintain the facilities and systems of treatment, intake, and distribution to comply with the provisions of 401 KAR Chapter 8 ~~including~~—Operation—and maintenance—includes] effective performance; preventive maintenance; operator staffing and training pursuant to 401 KAR 8:030, 11:040, and 11:050; establishing representative sample points that comply with the requirements of 401 KAR Chapter 8; and adequate process controls for testing, including quality assurance procedures.

(7) Reports to the cabinet.

(a) The supplier of water shall provide a complete monthly operating report to the cabinet, which shall be received at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601 not later than ten (10) days after the end of the month for which the report is filed.

1. A completed report shall include:

a. Volume of water treated;

b. Average number of hours per day water is being treated;

c.[b.] Type and amount of chemicals added;

d.[c.] Test results appropriate to be reported by the plant; and

e.[d.] The dated original signature, or equivalent, pursuant to KRS Chapter 369, of the owner or authorized agent.

2. A supplier of water shall submit the reports required by 40 C.F.R. 141.75(b) to the cabinet not later than ten (10) days after the end of each month the public water system serves water to the public.

3. A public water system shall report to the cabinet in accordance with 40 C.F.R. 141.31.

(b) The public water system shall submit to the cabinet a completed Annual Water System Data form, DOW0801, (April 2017) not later than January 10 of each year.

(c) Reports of failure to comply. A public water system shall report to the cabinet within forty-eight (48) hours, by phone or in writing, the failure to comply with a monitoring requirement of 401 KAR Chapter 8 or any other provision of 401 KAR Chapter 8, including the failure to comply with monitoring requirements].

(d)[(e)] Emergency reports.

1. If a public water system experiences a line break or loss of pressure as established in 401 KAR 8:150, Section 4(2)(e), loss of disinfection, or other event that may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water.

2. If a report required by this paragraph is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (800) 928-2380.

(8) Records to be maintained. An owner or operator of a public water system shall keep the records established in 40 C.F.R. 141.33 on the premises or readily accessible to cabinet staff inspecting the system.

(9) Boil water and consumer advisories.

(a) Boil water advisories.

1. A public water system or semipublic water system shall issue a boil water advisory if the system believes an advisory is warranted.

2. The cabinet may direct that a boil water advisory be issued

upon:

a. The reception of confirmed positive bacteriological results, for example, [including] E. coli or fecal coliform, in at least one (1) sample; or

b. Other circumstances that warrant an advisory for the protection of public health.

3. The cabinet may, if circumstances warrant for the protection of public health, issue a boil water advisory directly, rather than rely on a public or semipublic water system to issue the advisory.

4. A boil water advisory shall remain in effect until the cabinet approves the lifting of the advisory based on bacteriological results showing coliform bacteria are not present in the water.

(b) Consumer advisory.

1. The cabinet may issue a consumer advisory if:

a. Conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system; or

b. Other information of interest to the consumer exists.

2. The advisory shall notify affected persons of a required or recommended action.

(c) A public or semipublic water system shall:

1. Immediately notify the local health department that serves the area affected if a boil water advisory or consumer advisory is issued.

a. The notification may be made by telephone, email, or fax machine for an occurrence during normal business hours.

b. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department; or

2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department if the system issues a boil water advisory or consumer advisory. The protocol shall address:

a. For which types of advisories the system shall notify the affected health department;

b. What procedures shall be used to notify and under what circumstances;

c. How soon after the occurrence the notification shall be made; and

d. To whom the notification shall be made, during and after business hours.

(10) How to issue an advisory.

(a) A boil water advisory or consumer advisory shall be issued through newspapers, radio, television, or other media having an immediate public impact.

(b) As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals that maintain public awareness.

(c)1. The advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem.

2. Boiling instructions shall caution to boil water to be used for consumption by boiling the water for at least three (3) minutes at a rolling boil.

(11) Maps.

(a) A public or semipublic water system shall have on the premises, or readily accessible to cabinet staff inspecting the system, an up-to-date map of the distribution system. The map shall, at a minimum, show:

1. Line size;

2. Cutoff valves;

3. Fire hydrants;

4. Flush hydrants;

5. Tanks;

6. Booster pumps;

7. Chlorination stations;

8. Connection to emergency or alternative sources;

9. Wholesale customer master meters; and

10. Type of piping material in the distribution system and its location.

(b)1. If a public water system is not able to comply with the requirements of paragraph (a) of this subsection, the system may

petition the cabinet to modify this requirement.

2. The petition for modification shall state specifically what portion of the requirements of paragraph (a) of this subsection is not practical and why.

(12) Operation and maintenance manual.

(a) Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes:

1. A detailed design of the plant;

2. Daily operating procedures;

3. A schedule of testing requirements designating who is responsible for the tests;[and]

4. Safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility;and

5. Procedures for issuing a boil water advisory and consumer advisory as established in this administrative regulation, including notification to the public and local health department and consumers.

(b) The operation and maintenance manual shall be updated as necessary, but not less than annually, and shall be available for inspection by the cabinet.

(c) A public water system[systems] serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive the requirements of paragraphs (a) and (b) of this subsection. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(13) Flushing~~[recommended]~~. Each community water system shall establish and maintain a flushing program that ensures *that*:

(a) Dead end and low usage mains *shall be[are]* flushed periodically;

(b) Drinking water standards *shall be[are]* met;*[and]*

(c) Sediment and air *shall be[are]* removed~~[removal]~~; and

(d) Disinfectant residuals established in 401 KAR 8:150, Section 1 *shall be[are]* maintained. ~~[(a) To protect public health, a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines.~~

~~1. Flushing shall start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main.~~

~~2. Flushing shall continue at each hydrant until all traces of turbidity and color are gone.~~

~~3. Hydrants shall be opened and shut slowly to prevent damage from water hammer.~~

~~(b) In addition to the regularly scheduled flushing, the following conditions shall indicate a need to flush the entire system:~~

~~1. Turbidity within the distribution system greater than five (5) or one (1) nephelometric turbidity units, or NTU, as applicable to the system;~~

~~2. An inability to maintain an adequate residual of a disinfection agent in any part of the system; or~~

~~3. A heterotrophic plate count, or HPC, in excess of 500.~~

~~(c) Other indicators that flushing may be necessary shall be taste and odor complaints, color of water, contaminated water samples, or line repairs.]~~

(14) A person shall not introduce into the water supply system a substance that may have a deleterious physiological effect, or for which physiological effects may not be known.

(15) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as ~~established~~[prescribed] in 401 KAR 8:040, except that measurements for turbidity, disinfectant residuals, and other parameters ~~established~~[specified] by 40 C.F.R. 141.28 and 141.131 may be performed by a certified operator or an individual under the supervision of a certified operator.

(16) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine ~~if~~[whether] the supplies have acted or are acting in compliance with applicable laws or regulations that the cabinet

has the authority to enforce.

(a) Entry may include, for example, collection of water samples for laboratory analyses and inspection of records, files, papers, processes, controls, and facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8.

(b) The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

~~(17) Recommended practices for water supply reservoirs to be used for drinking water. The following practices may be employed by water systems that have a lake primarily used as a source of raw drinking water:~~

~~(a) Prohibition of swimming, water skiing, and other contact sports;~~

~~(b) Prohibition of large motor-driven craft or any craft with toilets;~~

~~(c) A requirement that an area at least 100 feet wide from the upper pool elevation be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns;~~

~~(d) Prohibition of effluent from sewage treatment plants being discharged into the lake;~~

~~(e) Picnicking may be permitted around the lake if plans for the development of a picnic area meet regulatory requirements of the cabinet; and~~

~~(f) Implementation of a nonpoint source pollution control plan.~~

~~(18) [(49)]~~ Water treatment chemicals and system components. Chemical additives and protective materials, such as paints and linings, may be used by a water system if they meet the requirements established in the Recommended Standards for Water Works, 2012 Edition, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works, 2012.

~~(19) [(49)]~~ Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired, or extended distribution systems shall be disposed in a manner that shall not violate 401 KAR 10:031.

~~(19) [(20)]~~ Water loading stations. A public water system that provides water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works.

Section 4[3]. The cabinet shall maintain records and submit reports as established in 40 C.F.R. 142.14, 142.15, and 142.16(f).

Section 5[4]. A public water system may receive a variance or exemption from some provisions of 401 KAR Chapter 8 only in accordance with 40 C.F.R. 141.4.

Section 6[5]. A public water system may use noncentralized treatment devices only in accordance with 40 C.F.R. 141.100 or bottled water only in accordance with 40 C.F.R. [141, Sections] 141.101.

Section 7[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Water Works, 2012 Edition[2003]," A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, 2012; and [is incorporated by reference.]

(b) "Annual Water System Data" form, DOW0801, (April 2017).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available the division's Web site at <http://water.ky.gov>.

(3) The "Recommended Standards for Water Works, 2012 Edition," A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and

Environmental Managers, 2012, may also be obtained at <http://10statesstandards.com/waterrev2012.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 5, 2017

FILED WITH LRC: July 6, 2017 at 11 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, August 14, 2017)**

401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8.

RELATES TO: KRS 151.634, 224.10-110[—224.60-100], 322.020(1), 322.340, 40 C.F.R. 141[141.5, 141.110-111]

STATUTORY AUTHORITY: KRS 224.10-100[224.10-100(2)], 224.10-110, 224.10-220, 40 C.F.R. 141.5[—141.110-111], 142.10, 142.16, 42 U.S.C. 300j-26

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 (2), (3), and (4) require the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control, including construction and operation of facilities, of the purification of water for public and semipublic use. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes design plan requirements for the construction of new and expanded facilities that deliver potable water for public or semipublic use and establishes requirements for submitting plans and specifications for modifications to existing facilities and a timeline for cabinet review and approval or disapproval of plans. There is not a federal regulation that deals with this subject matter; therefore, this administrative regulation is not more stringent than federal requirements.

Section 1. Preliminary Engineering Report. (1) A preliminary engineering report for a proposed new facility or a modification to an existing facility shall be prepared by a professional engineer and submitted to the cabinet.

(a) Except as established in paragraph (b) of this subsection, a supplier or potential supplier of water shall submit the preliminary engineering report to the cabinet before entering into a financial commitment for or initiating construction of a new public water system or increasing the capacity of an existing public water system.

(b) A preliminary engineering report shall not be required for:

1. A semipublic treatment facility; or
2. Construction, extension, or improvement of a distribution system.

(c) The preliminary engineering report shall comply with 40 C.F.R. 141.5, Siting requirements.

(d) An applicant for a proposed new public water system or modification to an existing public water system shall not locate a proposed surface water intake five (5) miles or less downstream from the discharge of an existing wastewater treatment plant. The cabinet may issue a variance to the five (5) mile limitation established in this paragraph if the applicant demonstrates that the:

1. Water quality at the proposed intake located five (5) miles or less downstream of a wastewater treatment plant will not be significantly affected by the discharge from the wastewater treatment plant; and
2. The proposed new public water system or modification to an existing public water system has the capacity to treat the source water in order that finished water will be in compliance with 401 KAR Chapter 8.

(2) The preliminary engineering report shall include[contain the

following information]:

- (a) The name of the applicant and of the owner of the plant;
- (b) A map that shows the location of the proposed facility;
- (c) The proposed source of water and the quantity available, with the location of the intake or wellhead identified by latitude and longitude in degrees, minutes, and seconds;
- (d) An analysis of the water from the proposed source for contaminants regulated pursuant to 401 KAR Chapter 8, performed by a certified laboratory;
- (e) A detailed description of the proposed facility;
- (f) A detailed flow diagram of the proposed facility;
- (g) A demonstration that the intake or intakes comply with subsection 1(d) of this section[Section 1(d) of this administrative regulation].
- (h)[(g)] Pilot study conclusions, if conducted; and
- (i)[(h)] An operation plan, including:
 - 1. Anticipated load;
 - 2. Hours of operation;
 - 3. Area served; and
 - 4. Number and certification of operational staff.
- (3) Preliminary engineering report approval.

(a) The preliminary engineering report shall be consistent with the requirements of:

1. Recommended Standards for Water Works, 2012 Edition, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, 2012;

2. General Design Criteria for Surface and Ground Water Supplies, April 2010; and

3. Subsection 1(d) of this section[Section 1(d) of this administrative regulation] [the materials incorporated by reference in Section 9(a) – (c) of this administrative regulation].

(b) Upon receipt and review of the preliminary engineering report, the cabinet shall either approve the preliminary engineering report or return it to the applicant for revision.

1. Final plans shall not be submitted until the preliminary engineering report has been approved.

2. Approval of the preliminary engineering report shall not constitute final approval for construction.

3. A proposed change in the preliminary engineering report shall be submitted to the cabinet and approved prior to incorporation in the final plans.

Section 2. Final Plans and Specifications. (1) Final plans and specifications for the construction or modification of a water treatment plant or a distribution facility shall be consistent with:

(a) Recommended Standards for Water Works, 2012 Edition, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, 2012;

(b) General Design Criteria for Surface and Ground Water Supplies, April 2010; and

(c) Section 1(1)(d)[1(d)] of this administrative regulation[the materials incorporated by reference in Section 9(a) – (c) of this administrative regulation].

(d)[(a)] If a preliminary engineering report is required pursuant to Section 1 of this administrative regulation, the final plans and specifications shall be consistent with the approved preliminary engineering report.

(e)[(b)] 1. Plans for the construction or modification of a public water system shall be submitted by the water system or shall be accompanied by a letter from the water system confirming that the water system has reviewed the plans, accepts the design, and has the capacity to and shall provide water service to the project.

2. A public water system that purchases water from another public water system shall submit a letter from the providing water system verifying the providing water system has the capacity and shall provide water service to the purchasing water system, including the proposed project if the project will result in:

- a. Demand for water exceeding eighty-five (85) percent of the purchasers current purchase contract; or
- b. Increased water demand by the purchaser by 10,000 gallons or more per day.

(c) Engineering plans and specifications shall:

- 1. Be submitted to the cabinet[; shall]
- 2. Be prepared by a professional engineer licensed in Kentucky[;] and[shall]
- 3. Bear the engineer's seal, signature, and date of signature.

4.[4.] Prior to the construction or modification of a public or semipublic water system, the following documents and fees shall be submitted to the cabinet:

a. Two (2)[Three (3)] copies of the plans and specifications or changes thereto, one (1) of which shall be in an electronic format;

b. For construction or modification of a distribution system, a complete Construction Application for Drinking Water Distribution, DW-1, (8/2010) form;

c. For the construction or modification of a treatment facility, a completed Construction Application for Drinking Water Treatment, DW-2, (8/2010) form;

d. For construction or modification of a semi-public facility, a completed Construction Application for Small Groundwater and Semi-Public Systems, DW-3, (8/2010) form;

e. A map that shows the location of the proposed facility;

f. Hydraulic calculations;

g. Design data and supporting documents necessary for review of the plans and specifications;

h. Chemical and microbiological analyses of a new raw water source if the plans and specifications are for a treatment facility; and

i. The fee required by 401 KAR 8:050.

5.[2.] Construction or modification of a public or semipublic water system shall not begin until the plans and specifications have been approved by the cabinet in writing; and[;]

6.[3.] The front page of the plans shall identify the:

- a. Public water system[; the]
- b. Owner of the public water system[; the]
- c. Public water system's location by city and county[;] and[the]
- d. Professional engineer preparing the plans.

(d) The cabinet's review of plans and specifications shall be limited to sanitary features of design and other features of public health significance and shall not include a review of structural, mechanical, or electrical design.

(e) The plans shall be drawn to scale and shall be accompanied by specifications, so as to allow a comprehensive engineering review, and shall include[the following]:

- 1. Plan and sectional views with all necessary dimensions; and
- 2. A piping diagram in sufficient detail to allow a hydraulic analysis of the system.

(2) Approval of final plans.

(a) Upon receipt and review of final plans and specifications, the cabinet shall either approve the final plans and specifications in writing or return them to the applicant for revision.

(b) If approved, one (1) set of approved plans and specifications shall be returned to the engineer, and one (1) set shall be returned to the water system.

Section 3. Construction. (1)(a) During construction, a set of approved plans and specifications shall be available at the job site.

(b) Construction shall be performed in accordance with the approved plans and specifications.

(2) If the cabinet's representative observes work being performed in a manner that does not conform to the approved plans and specifications, the cabinet shall notify the owner in writing.

(3) Unless construction begins within two (2) years from the date of approval of the final plans and specifications, the approval shall expire.

Section 4. Final Approval of Facility. (1) Upon completion of construction, a professional engineer shall certify in writing that the project has been completed in accordance with the approved plans and specifications.

(2) A proposed change to the approved plans affecting sanitary features of design shall be submitted to the cabinet for approval in accordance with Section 2 of this administrative regulation.

(3) The public water system shall not implement a change to

the approved plans without the prior written approval of the cabinet.

Section 5. Modifications and Extension of Service. The cabinet shall not approve a modification of a public water system or an extension of service to one (1) or more customers if the modification or extension of service is likely to result in the water system's inability to supply consistent water service in compliance with 401 KAR 8:010 through 8:510[8:600].

Section 6. Treatment Techniques. A public water system shall comply with the treatment technique requirements established in 40 C.F.R. 141.110[141.40] through 141.111, General requirements and treatment techniques for acrylamide and epichlorohydrin.

Section 7. Variance. If plans and specifications deviate from the requirements of this administrative regulation, a written request for a variance shall be submitted with the plans and specifications or preliminary plans.

- (1) The variance request shall include:
 - (a) A description of the reason for the variance request;
 - (b) The basis for the alternate plans or specifications, which shall be supported by current engineering practices; and
 - (c) Other information necessary to support the variance.[;]
- (2) A variance shall not be approved if it will not protect public health, water quality, and the environment.

Section 8. Approval Timetables. (1) A complete request for approval shall contain all the administrative and technical information required pursuant to 401 KAR Chapter 8, KRS Chapter 224, and 40 C.F.R. 141 and 142.

(2)(a) Except for the projects established in subsection (2)(b) of this section, the cabinet shall issue its final decision on a request for preliminary or final approval of plans and specification reviews within forty-five (45) calendar days of receipt of the complete request for approval.

(b) The cabinet shall issue its final decision on a request for a preliminary or final approval of plans and specification reviews for construction or modification of a water treatment plant within ninety (90) calendar days of receipt of the complete request for approval.

(3) Timetable Extensions.

(a) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant.

(b) If the permits are coordinated, the cabinet shall notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished.

(c) The established time frame for final action shall not exceed the last date for action pursuant to 401 KAR Chapter 8, KRS Chapter 224, and 40 C.F.R. 141 and 142, based on all applications being considered and the filing date of each application.

Section 9[8]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Water Works, 2012 Edition, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Mangers", 2012[Great Lakes - Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers "Recommended Standards for Water Works", 2007];

(b) "General Design Criteria for Surface and Ground Water Supplies", April 2010;

(c)["Water Policy Memorandum number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes within Five Miles Downstream from Wastewater Discharges", 1984;

(d)] "Construction Application for Drinking Water Distribution", DW-1, 8/2010;

(d)[(e)] "Construction Application for Drinking Water

Treatment", DW-2, 8/2010; and

(e)[(f)] "Construction Application for Small Groundwater and Semi-Public Systems", DW-3, 8/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) "Recommended Standards for Water Works, 2012 Edition, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers", 2012, may also be obtained at <http://10statesstandards.com/waterrev2012.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: April 12, 2017

FILED WITH LRC: April 13, 2017 at 9 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water @ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, August 14, 2017)**

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, KRS 224.10-420, 224.10-440, 224.43-310(5), 224.43-315, 224.43-340[(2), (8), (9)], 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340(1) authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes[sets forth] general requirements and procedures for submittal, processing, and amending of area solid waste management plans.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this administrative regulation as "the plan," shall contain the information as established[specified] in KRS 224.43-345.

(2) The plan shall be prepared and formatted in accordance with the[document entitled"] Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update[,], DEP [Form] 6062[(February 2004)].

Section 2. Public Information Procedures. (1) The governing body of a solid waste management area shall be responsible for conducting a public information period on the contents of the plan, or an amendment to the plan pursuant to Section 4 of this administrative regulation, prior to[its] submittal to the cabinet.

(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice by the governing body. The public notice shall[in accordance with subsection (3) of this section.

(3) A public notice shall be published by the governing body that meets the following requirements]:

(a)[The public notice shall] Be of a size to include not less than two (2) column widths and shall be in a display format;

(b)[The public notice shall] Be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan; and

(c)[The public notice shall] Include a description of:

1. The proposed action;

2.[;] Location where the plan may be reviewed;

3.[;] Procedures for submitting comments[;] and

4. Location of the public hearing, if a hearing is requested.

(3)[(4)] **If a public hearing is requested,** the governing body

shall hold a public hearing ~~if, a hearing is requested,~~ during the public comment period ~~one is requested~~.

(a) The hearing shall be held within fifteen (15) days of the close of the public comment period ~~with at least seven (7) days public notice~~.

(b) The public notice for a hearing shall be published at least seven (7) days prior to the hearing in accordance with subsection ~~(2)(b)(3)~~ of this section.

(c) The hearing may occur in conjunction with the governing body's normally scheduled official meeting.

~~(4)(5)~~ The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period.

(a) The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public.

(b) The notice shall state where copies of the response are maintained and how it may be obtained.

(c) The governing body shall ~~also~~ mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted no later than the deadlines established~~specified~~ in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area.

(2) ~~The original and one (1) copy of the~~ plan shall be sent to the ~~cabinet~~~~[supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601]~~.

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If the cabinet disapproves a plan, the cabinet shall notify the governing body in writing of each deficiency with the plan.

(a) The governing body shall have up to ninety (90) days from the date of the first notice of deficiency to correct all deficiencies and submit an approvable plan to the cabinet. The time elapsed during the governing body's correction of deficiencies shall not count toward the cabinet's 120-day review deadline established~~specified~~ in KRS 224.43-345(2).

(b) The cabinet may issue up to three (3) notices of deficiency during the ninety (90) day period.

(c) The cabinet may require the governing body to repeat the public information process established in~~described in Section 2 of~~ this administrative regulation for any plans significantly modified during the review process.

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies ~~[within time frames specified by the cabinet]~~, or fails to amend a plan in accordance with ~~[Section 4 of]~~ this administrative regulation, the cabinet shall take appropriate action, which may include~~take~~ one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to KRS 224.10-420 and 224.10-440~~[401 KAR Chapter 40]~~;

(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan, including grants and reimbursements awarded pursuant to~~under~~ KRS 224.43-505; and

(c) Prepare a plan for the governing body, conduct the public information procedure established~~specified~~ in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended upon either the initiative of the governing body of the

solid waste management area or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.

(2)(a) If the cabinet makes a determination that an amendment to a plan is necessary pursuant to~~under~~ subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes.

(b) The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3)(a) If the governing body makes a determination to amend its plan, the governing body~~it~~ shall prepare and submit to the cabinet a request to amend that contains the ~~following~~:

1. Name of the county or area that intends to amend the~~its~~ plan;

2. Name and address of the governing body;

3. Name, address, and phone number of a contact person;

4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and

5. A written ~~description outlining the~~ justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b)1. The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine ~~if whether~~ a plan amendment is necessary as established in subsection (2)(a) of this section. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required.

2. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with the amendment process~~amending its plan~~ in accordance with subsections (4) and (5) of this section.

(4)(a) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2 of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. The cabinet shall not require the governing body to publish a public notice if the proposed amendment is to:

1. Correct a clerical error~~;~~;

2. Correct a typographical error;

3. Change the name, address, or phone number of a person identified in the plan;

4. Make revisions to solid waste ordinances pertaining to changes in waste haulers, franchise agreements, or similar service changes in which services are revised and a public notice and comment period have already been conducted as part of the local ordinance approval process; or

5. Make similar minor administrative changes.

(b) Solid waste plan amendments that~~which~~ require the governing body to undertake the public information process established~~described~~ in Section 2 of this administrative regulation, shall include any solid waste plan amendment that:

1. Increases fees to the public;

2. Diminishes services to the public;

3. Closes a solid waste facility;

4. Establishes a new solid waste facility;

5. Expands the size or capacity of an existing facility~~;~~~~or~~;

6. Changes the location of a solid waste facility or;

7. Other similar changes to facilities or services that affect the public.

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit ~~the following~~ to the cabinet:

(a) A copy~~Two (2) copies~~ of each page of the plan that is being amended;

(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;

(c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;

(d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class

city governing body that developed its portion of the plan, if required;

(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;

(f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and

(g) Upon request, additional documentation necessary for the cabinet to determine that the plan amendment process procedure was properly followed~~[Any other supporting documentation as required by the cabinet].~~

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process. (1) The governing body shall submit to the cabinet for reapproval of an updated plan on or before October 1, 2007, and every five (5) years thereafter.

(2) The plan update shall be subject to the public information procedures of Section 2 of this administrative regulation.

(3) The cabinet shall review the plan update in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet pursuant to KRS 224.43-345.

(2) If a governing body fails to implement an approved plan, the cabinet:

(a) Shall not endorse projects that generate solid waste pursuant to~~[under]~~ the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-340 until the governing body is in compliance with its plan;

(b) May withhold any grants, loans or other monies for any grant applicant~~[the area and the counties and cities]~~ located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded pursuant to~~[under]~~ KRS 224.43-505, until the governing body is in compliance with the governing body's~~[its]~~ plan; and

(c) May initiate enforcement proceedings against the governing body. Enforcement proceedings shall be pursuant to KRS 224.10-420 and 224.10-440~~[224.99-010 and 224.99-020]~~.

Section 7. Annual Reports. (1) The annual report, established~~[specified]~~ in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area. The ~~[original and one (1) copy of the]~~ report shall be sent to the cabinet ~~[supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40604].~~

(2) The annual report shall be prepared and formatted using the~~[the]~~ Solid Waste Management Area Annual Report ~~[Form]~~, DEP ~~[Form]~~ 6061~~[(February 2004), incorporated by reference in Section 8 of this administrative regulation. This form shall be effective January 1, 2005, for the annual report covering calendar year 2005].~~

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guidance for Preparing a~~[an]~~ Area Solid Waste Management Area Plan 5-Year Update", DEP 6062, March 2017~~[November 2016]~~; and

(b) "Solid Waste Management Area Annual Report ~~[Form]~~", DEP 6061, July~~[March]~~ 2017~~[November 2016]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, ~~[(502) 564-6716,]~~ Monday through Friday, 8:00~~[8]~~ a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 12, 2017 at 2 p.m.

CONTACT PERSON: Michelle Mitchell, Internal Policy Analyst, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6713, fax (502) 564-4245, email MichelleM.Mitchell@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, August 14, 2017)**

804 KAR 4:230. Extended hours supplemental licenses.

RELATES TO: KRS 243.030(16), 243.042, 243.050, 243.082, 244.290, 244.480

STATUTORY AUTHORITY: KRS 241.060, 243.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 243.050 authorizes the board to establish alcoholic beverage sales days and times for holders of extended hours supplemental licenses~~[establishes the extended hours supplemental license and authorizes the board]~~ by administrative regulation~~[to set the necessary conditions and restrictions upon this class of license]~~. This administrative regulation establishes the alcoholic beverage sales days and times for holders of extended hours supplemental licenses~~[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 Sales Times. A licensee holding an Extended Hours Supplemental License (ESL) may~~is authorized to~~ engage in~~[for]~~ the retail sale of alcoholic beverages at the times and days set forth in subsections (1) and (2) of this section~~[, distilled spirits, wine, and malt beverages by the drink].~~ (1)~~[A convention center holding a]~~ Nonquota type 1 licensees and qualified historical site licensees may sell alcoholic beverages each day of the week between 6:00 a.m. and midnight~~[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].~~

(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.~~

(3) ~~An automobile racetrack 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.~~

(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, or a retail licensee located within a commercial airport, may sell alcoholic beverages during the twenty-four (24) hours of every day]~~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.~~

~~Section 3. The supplemental licenses may be issued by the distilled spirits administrator and malt beverage administrator who, pursuant to KRS 243.050, 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.~~

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 15, 2017 at 10 a.m.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, August 14, 2017)**

804 KAR 10:010. Appointment notification of local~~[alcoholic beverage control]~~ administrator.

RELATES TO: KRS 241.110, 241.120,~~[241.130,]~~ 241.160, 241.170,~~[241.180,]~~ 241.220, 241.230~~[, 241.240]~~

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.110 permits the county judge/executive or other appointed person to serve as a county alcoholic beverage control administrator for a moist or wet county. KRS 241.160(1) requires wet or moist cities with a population equal to or greater than 3,000, or a consolidated local government, to create by ordinance the office of city alcoholic beverage control administrator. KRS 241.160(2) and (3) permit[permits] a city with a population less than 3,000 to create by ordinance the office of city alcoholic beverage control administrator unless the city is located in a county containing a consolidated local government. KRS 241.220 requires an urban-county government to create by ordinance the office of urban-county alcoholic beverage control administrator. KRS 241.110, KRS 241.170, and KRS 241.230 require all local administrators to take the oath prescribed by Section 228 of the Kentucky Constitution[KRS 241.130, KRS 241.180, and KRS 241.240 require a local alcoholic beverage control administrator to take an oath and execute a \$1,000 bond as a condition of assuming the role as local alcoholic beverage control administrator]. This administrative regulation requires a local government to provide written notification to the department when a local~~[alcoholic beverage control]~~ administrator is appointed and to provide proof that the oath was taken~~[and the surety bond was posted]~~.

Section 1. Definition. "Local~~[alcoholic beverage control]~~ administrator" is defined by KRS 241.010(36)[means a county alcoholic beverage control administrator, city alcoholic beverage control administrator, or an urban-county alcoholic beverage control administrator].

Section 2. Notification procedure. A local~~[alcoholic beverage control]~~ administrator appointed under KRS Chapter 241 shall submit the following documents to the department within thirty (30) days of appointment:

(1) A letter, resolution, or ordinance evidencing the local administrator's appointment or the county judge/executive's acceptance of the position; and

(2) Written certification that the oath prescribed by Section 228

of the Kentucky Constitution[ef office] has been administered to the local[alcoholic beverage control] administrator[;]

(2) A copy of the surety bond for the local alcoholic beverage control administrator; and

(3) A letter, resolution, or ordinance evidencing the local alcoholic beverage control administrator's appointment or the county judge/executive's acceptance of the position[.]

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 15, 2017 at 10 a.m.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, August 14, 2017)**

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

RELATES TO: KRS 45A.340, 216B.015, 216B.020(2)(a), 216B.040, 216B.062(1), 216B.095(1), 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1~~_[and] (b), 216B.085, 216B.086, 216B.090~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1~~_~~ and (b) require the Cabinet for Health and Family Services to administer Kentucky's certificate of need program, to promulgate administrative regulations as necessary for the program, and to conduct public hearings in respect to certificate of need applications and revocations of certificates of need. KRS 216B.085, 216B.086, and 216B.090 establish requirements for certificate of need, revocation, and reconsideration hearings. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the certificate of need program.

Section 1. Definitions. (1) "Affected person" is defined by KRS 216B.015(3).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3)[(2)] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(4)[(3)] "Days" means calendar days, unless otherwise specified.

(5)[(4)]["Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6)[(5)] "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Notice" means notice given through the cabinet's Certificate of Need Newsletter.

(7)[(6)] "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(8)[(7)] "Office or clinic" means the physical location at which health care services are provided.

(9)[(8)]["Owner" means a person][as defined in KRS 216B.015(22)] [who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(10)] "Party to the proceedings" is defined by KRS 216B.015(20).

(10)[(11)] "Person" is defined by KRS 216B.015(22).

(11)[(12)](9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the

owners and operators of an office or clinic.

(10) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer.

~~(12)(13)(14))~~ **"Proposed service area" means the geographic area the applicant proposes to serve.**

~~(14)(12))~~ **"Public notice" means notice given through the cabinet's Certificate of Need Newsletter.**

~~(15)(13))~~ "Secretary" is defined by KRS 216B.015(26).

~~(13)(16)(14))~~ "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of documents required by this administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. Eastern time on the due date.

(2) Filing of a document, other than a certificate of need application or a proposed hearing report, may be made by facsimile transmission or email if:

(a) The document is received by the cabinet by facsimile transmission or email on or before 4:30 p.m. Eastern time on the date due; and

(b) The original document is filed with the cabinet on or before 4:30 p.m. Eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

~~(5)(a)~~ Except as provided in paragraph (b) of this subsection, the last day of the period so computed shall be included.

~~(b)~~ If the last day, unless it is a Saturday, a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m. Eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) A hearing on a certificate of need application or revocation of a certificate of need shall be held by a hearing officer from the Cabinet for Health and Family Services, Division of Administrative Hearings.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined by~~(in)~~ KRS 45A.340.

(c) A party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and each affected person who requested the hearing not less than ten (10) days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(4) A public hearing shall be canceled if each affected person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of each affected person who has not requested a hearing shall not be required in order for a hearing to be canceled.

(5) A dispositive motion made by a party to the proceedings shall be filed with the cabinet~~(hearing officer)~~ at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;
2. Identify additional information and evidence needed for the

hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Record the conference; or

2. If requested by a party to the proceedings, allow a court reporter~~(stenographer)~~ to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties to the proceedings~~(or persons who will participate)~~;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of a nonsubstantive review hearing and at least seven (7) days prior to the scheduled date of any other certificate of need hearing, each affected person~~(all persons)~~ wishing to participate as a party to the proceeding shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceeding:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application that~~(which)~~ has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

~~(9)(a)~~ If a party to the proceedings requests a court reporter to be present during the hearing, the party shall:

1. Arrange for and bear the cost for a court reporter to transcribe the hearing; and

2. File an original copy of the transcript with the cabinet.

~~(b)~~ If all parties agree, the hearing may be recorded in lieu of a written transcript, at the discretion of the hearing officer.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Each party appearing at the hearing shall enter an appearance by stating the party's name and address.

~~(11)(10))~~ Each party shall have the opportunity to:

(a) Present its case;

(b) Make an opening statement;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make a closing statement; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

~~(12)(14))~~ A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

~~(13)(12))~~ The hearing officer may:

(a) Allow testimony or other evidence on an issue not previously identified in the preliminary order that may arise during the course of the hearing, including ~~a[an-additional]~~ petition for intervention that may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

~~(14)[(13)]~~ The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

~~(15)[(14)]~~ The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

~~(16)[(15)]~~ A witness shall be examined under oath or affirmation.

~~(17)[(16)]~~ A witness may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

~~(18)[(17)]~~ The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5).

~~(19)[(18)]~~ A document shall not be incorporated into the record by reference without the permission of the hearing officer. Each referenced document shall be precisely identified.

~~(20)[(19)]~~ The hearing officer may take official notice of facts that are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

~~(21)[(20)]~~ The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

~~(22)[(21)] In a hearing on an application for a certificate of need,]~~ The hearing officer ~~may[shall]~~, upon the agreement of the applicant, ~~extend[continue a hearing beyond]~~ the review deadlines established by KRS 216B.062(1) and 216B.095(1).

~~(23)[(22)]~~ If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

~~(24)[(23)]~~ The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation ~~that[which]~~ demonstrates~~[that there is]~~ probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900

KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions that are a part of a certificate of need approval and license at the request of any affected person.

(6) The show cause hearing regarding the terms and conditions shall determine ~~if[whether]~~ a person is operating a health facility or health service in violation of any terms or conditions that are a part of that certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her ~~recommended[proposed]~~ findings of fact, conclusions of law, and ~~recommended[proposed]~~ decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130, Certificate of Need criteria for physician exemption.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist that support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7) days prior to a show cause hearing required or requested pursuant to KRS Chapter 216B, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a ~~recommended[proposed]~~ decision to the secretary.

(15) Each party shall have fifteen (15) days from the date the recommended decision is mailed by the cabinet to file exceptions to the recommended decision with the secretary.

~~(16)~~ Within thirty (30) days of the receipt of the findings of fact and ~~recommended[proposed]~~ decision from the hearing officer, the secretary shall issue a final decision on the matter.

~~(17)[(16)]~~ A copy of the final decision shall be mailed to ~~each party[the person]~~ or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

~~(18)[(17)]~~ If a violation is found to have occurred as a result of

a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

~~(19)~~~~(18)~~ If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the action required by this subsection.

(a) If the person had not previously been found to be in violation of the terms and conditions ~~that~~~~which~~ were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions that were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

~~(20)~~~~(19)~~ The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

PAUL A. COOMES, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 9, 2017 at 2 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist,
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

Office of Health Policy

(As Amended at ARRS, August 14, 2017)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920, 216.2925,
216.2927, 304.14-135~~(216.2929)~~

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Ambulatory facility" is defined by KRS 216.2920(1).

(2) "Cabinet" is defined by KRS 216.2920(2).

(3) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(4) "Hospital" is defined by KRS 216.2920(6).

(5) "Hospitalization" means the inpatient medical episode

identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for:

~~(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds; or~~

~~(b) hospice care.~~

(6) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(7) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(8) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(9) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(10) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient hospitalization records. A hospital shall document every hospitalization it provides on a Standard Billing Form and shall, ~~for~~~~from~~ every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) A hospital shall document on a Standard Billing Form the outpatient services it provides and shall ~~for~~~~from~~ every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(b) A hospital shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital shall submit required data on every patient as provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient services records.

(a) An ambulatory facility shall submit outpatient services records if the ambulatory facility provides one (1) or more of the following outpatient services:

1. Surgery;

2. Childbirth;

3. Urgent treatment of minor illness or injury;

4. Emergency;

5. Mammography;

6. X-ray;

7. Ultrasound;

8. Computed tomography;

9. Magnetic resonance imaging;

10. Cardiac catheterization;

11. Positron emission tomography; and

12. Megavoltage radiation therapy.

(b) An ambulatory facility shall document on a Standard Billing Form the outpatient services it provides and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation. ~~[An ambulatory facility shall document on a Standard Billing Form the outpatient services it provides and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.]~~

(c) ~~[(b)]~~ An ambulatory facility shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of whether the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payer.

(c) Data on a hospitalization shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation by which[where] one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by a hospital shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider shall submit data by electronic transmission as specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data[date] log and a

verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Each provider shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data that[which] during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. A provider may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow a provider thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) A provider shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

(a) If[When] editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) If[When] editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine, which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines.

(1) A provider experiencing extenuating circumstances or a hardship may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, the provider[if] shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers. (1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. (1) A hospital shall ensure that each record submitted to the cabinet contains [at least] the data elements identified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals [this section and as provided on the Standard Billing Form].

(2) A single asterisk identifies elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Double asterisks identify elements that shall not be blank if present on the record and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual

for Hospitals.

(4) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	**Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	**Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	**Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
Yes	**Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
Yes	*Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payer Identification – Payer Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier – ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
Yes	*Principal – Diagnosis – Code – present – on admission identifier for non-Medicare claims
Yes	*Principal – Diagnosis – Code – present – on admission identifier for Medicare claims
Yes	**Secondary and Other Diagnosis Codes
Yes	**Secondary and Other Diagnosis code present on admission identifier for non-Medicare claims
Yes	**Secondary and Other Diagnosis code present on admission identifier for Medicare claims
Yes	*Inpatient Admitting Diagnosis
Yes	**Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
Yes	*External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present]
Yes	*Principal Procedure Code & Date if present
Yes	**Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
Yes	*Operating Clinician ID Number/NPI
Yes	**Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity]

Section 13. Required Data Elements for Ambulatory Facilities. (1) An ambulatory facility shall ensure that each record submitted to the cabinet contains [at least] the data elements identified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities. [this section and as provided on the Standard Billing Form].

(2) A single asterisk identifies elements that shall not be blank and shall contain data

or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Double asterisks identify elements that shall not be blank if present on the record and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(4) Additional data elements, as specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	**Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	**Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
Yes	**Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	**1st Insurer Group #
Yes	**2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	**Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payer Name
Yes	**Secondary Payer Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes]

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised October 1, 2017[2015]; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised October 1, 2015.

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

PAUL A. COOMES, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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
Office of Health Policy
(As Amended at ARRS, August 14, 2017)

900 KAR 7:040. Release of public data sets for health care discharge data.

RELATES TO: KRS 61.870-61.884, 216.2920, 216.2927,[-] 216.2929

STATUTORY AUTHORITY: KRS 194A.050(1), 216.2923(2)(b)(c)], 216.2925(1), (2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS

216.2923(2)(b)(c)] requires the Cabinet for Health and Family Services to promulgate administrative regulations for its transactions related to KRS 216.2920 to 216.2929[publish and make available information relating to the health care delivery and finance system that is in the public interest]. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216.2920(2).

(2) "Data" means the information collected pursuant to 900 KAR 7:030.

(3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service, ambulatory surgery, emergency department, or observation stay billing record contained in a data file.

(4) "Health care provider" is defined by KRS 216.2920(5).

(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data for purposes of this administrative regulation.

(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. Encounter-level data shall be released in an electronic text file and shall include the following data elements[the following standard file format described in the table below]:

Encounter-Level Data[Standard File Format- Data Element Contained in the File if information is available File Type]
Provider ID
Quarter and[&] Year of Discharge
Patient Gender
Patient Age Group
Patient Race or[/] Ethnicity
Patient Resident County
Type of Admission
Source of Admission
All Diagnoses Available for Each Individual Record
All Procedures Available for Each Individual Record
Patient Zip Code[Diagnosis 1 (Primary)
Diagnosis 2
Diagnosis 3
Diagnosis 4
Diagnosis 5
Diagnosis 6
Diagnosis 7
Diagnosis 8
Diagnosis 9
Diagnosis 10
Diagnosis 11
Diagnosis 12
Diagnosis 13
Diagnosis 14
Diagnosis 15
Diagnosis 16
Diagnosis 17
Diagnosis 18
Diagnosis 19
Diagnosis 20
Diagnosis 21
Diagnosis 22
Diagnosis 23
Diagnosis 24
Diagnosis 25
Procedure 1

Procedure 2
Procedure 3
Procedure 4
Procedure 5
Procedure 6
Procedure 7
Procedure 8
Procedure 9
Procedure 10
Procedure 11
Procedure 12
Procedure 13
Procedure 14
Procedure 15
Procedure 16
Procedure 17
Procedure 18
Procedure 19
Procedure 20
Procedure 21
Procedure 22
Procedure 23
Procedure 24
Procedure 25]
Length of Stay
Total Charges
Discharge Status
Payer 1 (Primary)
Payer 2
Payer 3
[Diagnostic related group
Medicare Severity – Diagnostic related group
Major Diagnostic Category
Diagnosis Version Qualifier
Event Code 1
Event Code 2]
Do not resuscitate indicator
Diagnosis present on admission indicator

Section 3. Summary Data. (1) The cabinet shall not release data if KRS 216.2927 prohibits its release.

(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:

- (a) Diagnoses and procedures, primary, and any other level;
- (b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;
- (c) Patient gender;
- (d) Age or age grouping;
- (e) Discharge status;
- (f) Payor category, all levels;
- (g) Charge information, total and ancillary;
- (h) County of patient residence;
- (i) County of provider;
- (j) Ancillary department information;
- (k) Length of stay, total, and average;
- (l) External cause of injury;
- (m) Race or ethnicity; or
- (n) Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.

(3) Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 900 KAR 7:030.

Section 4. Release of Data. (1) A person or agency shall, as a condition for receiving data from the cabinet, sign an ["Agreement for Use of Kentucky Health Claims Data[\"]. A person or agency receiving data shall agree to adhere to the confidentiality

requirements established in subsection (2) of this section and KRS 216.2927.

(2) To protect patient confidentiality:

(a) A report or summary of data that consists of five (5) or fewer records shall not be released or made public;

(b) A person or agency receiving data shall not redistribute or sell data in the original format;

(c) A person or agency receiving data shall not redistribute or sell a subset of the data or an aggregate product of the data;

(d) Distribution of data received by the cabinet shall be approved by the custodial agency prior to receipt of the data;

(e)[(d)] The data collected pursuant to 900 KAR 7:030 shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and

(f)[(e)] A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees. (1) The cabinet shall charge a fee not to exceed \$1,500 for the purchase of a single copy of an annual, public-use data set.

(2) A public-use data set shall be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 900 KAR 7:030. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference. (1) "Agreement for Use of Kentucky Health Claims Data", May 2017[September 2008], is incorporated by reference.

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

PAUL A. COOMES, Executive Director
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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
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, August 14, 2017)

902 KAR 55:015. Schedules of controlled substances
[Schedule I substances].

RELATES TO: KRS 217.005 -217.215, 218A.010, 218A.020, 218A.040, 218A.060, 218A.080, 218A.100, 218A.120[218A.010-218A.050], 218A.200, 21 C.F.R. 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.35, 1308.49, 21 U.S.C. 301 – 399f, 801-971

STATUTORY AUTHORITY: KRS[494A.050,] 218A.020(1), (3) [218A.250]

NECESSITY, FUNCTION, AND CONFORMITY:[KRS 494A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of the individual citizens of the commonwealth, to operate programs and fulfill the cabinet's responsibilities, or to implement federal law. KRS 218A.250 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A.] KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations in order to add[substances to or] delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health

and Family Services to promulgate administrative regulations to control substances at the state level in the same numerical schedule corresponding to the federal schedule or control a substance in a more restrictive schedule than the federal schedule. This administrative regulation ~~designates~~^{establishes} Schedule I, II, III, IV, and V drugs. This administrative regulation differs from the federal regulation, 21 C.F.R. 1308.14, because it designates pentazocine, barbitol, methylphenobarbital, and phenobarbital as a Schedule III controlled substance. The federal regulation designates these substances as a Schedule IV controlled substance. The Cabinet for Health and Family Services recognizes that pentazocine and derivatives of barbituric acid or its salts have significant abuse potential, and inclusion on Kentucky's Schedule III list will help reduce the risk to public health. This administrative regulation further differs from the federal regulation, 21 C.F.R. 1308.14-1308.15, because it designates nalbuphine as a Schedule IV controlled substance and gabapentin as a Schedule V controlled substance. The Cabinet for Health and Family Services recognizes that nalbuphine and gabapentin have significant abuse potential, and inclusion on Kentucky's controlled substances schedules will help reduce the risk to public health[, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances].

Section 1. Schedule I Controlled Substances. (1) Each substance that is scheduled or designated as a Schedule I controlled substance under 21 C.F.R. 1308.11, including a substance temporarily scheduled or designated under 21 C.F.R. 1308.11(h) or 1308.49, shall be scheduled or designated at the state level as a Schedule I controlled substance.

(2) The following shall be exempt from control as a Schedule I substance:

(a) Cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols pursuant to the exemption established in 21 C.F.R. 1308.35; and

(b) Any substance or product exempt from the definition of marijuana pursuant to KRS 218A.010(27)(25)(a) – (f).

Section 2. Schedule II Controlled Substances. Each substance that is scheduled or designated as a Schedule II controlled substance under 21 C.F.R. 1308.12 shall be scheduled or designated at the state level as a Schedule II controlled substance.

Section 3. Schedule III Controlled Substances. (1) Except as provided by subsection (2) of this section, each substance that is scheduled or designated as a Schedule III controlled substance under 21 C.F.R. 1308.13 shall be scheduled or designated at the state level as a Schedule III controlled substance.

(2) The Cabinet for Health and Family Services designates the following as Schedule III controlled substances:

(a) Pentazocine;

(b) Barbitol;

(c) Methylphenobarbital; and

(d) Phenobarbital.

(3) This section shall not apply to any material, compound, mixture, or preparation containing any quantity of an anabolic steroid substance, or any isomer, ester, salt, or derivative thereof that is:

(a) Expressly intended for administration through implant to livestock or other nonhuman species; and

(b) Approved by the United States Food and Drug Administration for use as described in this subsection.

Section 4. Schedule IV Controlled Substances. (1) Except as provided by subsection (2) of this section and Section 3(2) of this administrative regulation, each substance that is scheduled or designated as a Schedule IV controlled substance under 21 C.F.R. 1308.14 shall be scheduled or designated at the state level as a Schedule IV controlled substance.

(2) The Cabinet for Health and Family Services designates the following as a Schedule IV controlled substance: nalbuphine.

Section 5. Schedule V Controlled Substances. (1) Except as

provided by subsection (2) of this section, each substance that is scheduled or designated as a Schedule V controlled substance under 21 C.F.R. 1308.15 shall be scheduled or designated at the state level as a Schedule V controlled substance.

(2) The Cabinet for Health and Family Services designates the following as a Schedule V controlled substance: gabapentin.

Section 6. Dispensing Without Prescription. A controlled substance listed in Schedule V, which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 to 399f, may be dispensed by a pharmacist without a prescription to a purchaser at retail, if:

(1) The medicinal preparation contains, in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) or more than forty-eight (48) dosage units of any controlled substance containing opium is dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging is in accordance with the current requirements of KRS 217.005 to 217.215, 21 U.S.C. 301 to 399f, and the United States Pharmacopeia;

(4) The preparation is dispensed or sold in good faith as a medicine and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation is not displayed in areas open to the public;

(6) The dispensing is made only by a pharmacist and not by a nonpharmacist employee even if under the supervision of a pharmacist. After the pharmacist has fulfilled his or her professional and legal responsibilities as set forth in this section, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist;

(7) The purchaser is at least eighteen (18) years of age;

(8) The pharmacist requires every purchaser of a controlled substance under this section not known to the pharmacist to furnish suitable identification, including proof of age if appropriate; and

(9) The dispensing of exempt controlled substances under this administrative regulation is recorded in a bound book that shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200 and contain the:

(a) Name and address of the purchaser;

(b) Name and quantity of controlled substance purchased;

(c) Date of each purchase; and

(d) Name or initials of the pharmacist who dispensed the substance to the purchaser.~~[Opiates. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:~~

(1) ~~Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);~~

(2) ~~Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidinyl-N-phenylacetamide;~~

(3) ~~Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);~~

(4) ~~Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;~~

(5) ~~Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpropanamide;~~

(6) ~~Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide;~~

(7) ~~Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;~~

(8) ~~Difenoxin;~~

(9) ~~3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;~~

- (10) 3-methylthiofentanyl—N-3-methyl-1-(2-thienyl)—ethyl-4-piperidinyl-N-phenylpropanamide;
 (11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
 (12) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide;
 (13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
 (14) Thienylfentanyl, N-1-(2-thienyl)—methyl-4-piperidinyl-N-phenyl-propanamide;
 (15) Thiofentanyl—N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropanamide;
 (16) Tilidine; and
 (17) U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide).

Section 2. Opium Derivatives. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Drotebanol; and
 (2) Etorphine (except hydrochloride salt).

Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers if the existence of these salts: isomers, including the optical position and geometric isomers; and salts of isomers is possible within the specific chemical designation:

- (1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl)indole);
 (2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA, 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);
 (3) 2, 5-dimethoxyamphetamine (2,5-DMA);
 (4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
 (5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);
 (6) 3, 4-methylenedioxymethamphetamine (MDMA);
 (7) 4-methoxyamphetamine (PMA, 4-methoxy-alpha-methylphen-ethylamine, paramethoxyamphetamine);
 (8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl-MDA, MDE, MDEA);
 (9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);
 (10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo-b,d-pyran);
 (11) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl) pyrrolidine, PCPy, PHP);
 (12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclohexyl)piperidine, TCP, TCPy);
 (13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy);
 (14) 2-(2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5H-NBOMe);
 (15) 2-(4-iodo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5I-NBOMe);
 (16) 2-(4-bromo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5B-NBOMe); and
 (17) 2-(4-chloro-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5C-NBOMe).

Section 4. Depressants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers

if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone; and
 (2) Methaqualone.

Section 5. Stimulants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);
 (2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);
 (3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);
 (4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-benzenetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;
 (5) N-ethylamphetamine;
 (6) Fenethylamine;
 (7) Methcathinone (2-(methylamino)-propiofenone, alpha (methylamino)-propiofenone, alpha (methylamino)-propiofenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers;
 (8) Paramethoxymethamphetamine (PMMA); and
 (9) Paramethoxyamphetamine (PMA).

Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:

- (1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);
 (2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);
 (3) 1-(5-fluoropentyl)-1H-indazol-3-yl(naphthalen-1-yl)methanone (THJ-2201);
 (4) 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone (THJ-018);
 (5) (1-(5-fluoropentyl)-1H-benzimidazol-2-yl)(naphthalen-1-yl)methanone (AM2201-benzimidazole analog, FUBININA);
 (6) Indole-3-carboxylate esters: Any compound containing a 1H-indole-3-carboxylate ester structure with the ester oxygen bearing a naphthyl, quinolinyl, isoquinolinyl, or adamantyl group and substitution at the one (1) position of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not further substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, or benzyl groups to any extent. Examples of this structural class include PB-22 and 5F-PB-22; and
 (7) Indazole-3-carboxamides: Any compound containing a 1H-indazole-3-carboxamide structure with substitution at the nitrogen of the carboxamide by a naphthyl, quinolinyl, isoquinolinyl, adamantyl, or 1-amino-1-oxoalkan-2-yl group and substitution at the one (1) position of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indazole ring to any extent and whether or not further substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, 1-amino-oxoalkan-2-yl, or benzyl groups to any extent. Examples of this structural class include AB-FUBINACA and AB-CHMINACA.

Section 7. Control of Substances Scheduled under Federal Law. If a substance not identified in Section 1 through Section 6 of this administrative regulation is temporarily scheduled or designated as a Schedule I controlled substance under the federal Controlled Substances Act, 21 U.S.C. 801-971, or 21 C.F.R. 1308.11, the substance shall be considered to be controlled at the state level as a Schedule I controlled substance.]

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

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CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(As Amended at ARRS, August 14, 2017)

902 KAR 55:040. Excluded nonnarcotic substances[~~over-the-counter products~~].

RELATES TO: KRS 218A.020-~~218A.120~~[~~218A.130~~], 21 C.F.R. 1308.22, 21 U.S.C. 301-~~399f~~, 801-971

STATUTORY AUTHORITY: KRS[194.050, 211.090,] 218A.020(4), ~~218A.250~~[~~218A.250~~, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY:[Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 218A.020(4) requires the Cabinet for Health and Family Services to exclude any nonnarcotic substance from a schedule if the substance[~~products that~~] may be lawfully sold over the counter [(without prescription under)] ~~from~~ the provisions of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301-~~399f~~), the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801-971), or KRS Chapter 218A. KRS 218A.250 requires the Cabinet for Health and Family Services to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A.[The purpose of] This administrative regulation excludes certain nonnarcotic substances from scheduling pursuant to KRS 218A.020(4)[is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A].

Section 1. Excluded Substances[~~Over-the-counter Products~~]. The Cabinet for Health and Family Services shall exclude from all state schedules established in accordance with KRS 218A.020(1), (3) and 902 KAR 55:015 any nonnarcotic substance that may be lawfully sold over-the-counter without a prescription if the substance has been excluded from all federal schedules pursuant to 21 U.S.C. 811(g)(1) and as listed in 21 C.F.R. 1308.22.[excludes the following products from the provisions of KRS Chapter 218A:

(1) ~~Asthma-Eso~~®, tablet, NDC code 00349-2018: phenobarbital 8-10 mg.;

(2) ~~Azma-Aids~~®, tablet, NDC code 00367-3153: phenobarbital 8 mg.;

(3) ~~Bronkolixir~~®, elixir, NDC code 00057-1004: phenobarbital 0.8 mg/ml;

(4) ~~Bronkotabs~~®, tablet, NDC code 00057-1005: phenobarbital 8 mg.;

(5) ~~Cheate's Leg Freeze~~®, liquid: chloral hydrate 246.67 mg/ml.;

(6) ~~Guiaphed~~® Elixir, elixir, NDC code 00182-1377: phenobarbital 4 mg/ml;

(7) ~~Primatene (P-tablets)~~®, tablet, NDC code 0573-2940: phenobarbital 8 mg.;

(8) ~~Tedral~~®, tablet, NDC code 00071-1230: phenobarbital 8 mg.;

(9) ~~Tedral Elixir~~®, elixir, NDC code 00071-0242: phenobarbital 40 mg./ml.;

(10) ~~Tedral S.A.~~®, tablet, NDC code 00071-1231: phenobarbital 8 mg.;

(11) ~~Tedral Suspension~~®, suspension, NDC code 00071-0237: phenobarbital 80 mg./ml.;

(12) ~~Tedrigen~~®, tablet, NDC code 00182-0134: phenobarbital 8 mg.;

(13) ~~Theophed~~®, tablet, NDC code 00719-1945: phenobarbital 8 mg. and

(14) ~~Vicks Inhaler~~®, inhaler, NDC code 23900-0010: ~~l-~~Desoxyephedrine 113 mg.]

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

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CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(As Amended at ARRS, August 14, 2017)

902 KAR 55:095. Prescription for Schedule II controlled substance – authorization of oral prescriptions for immediate administration, facsimile transmission, or partial filling.

RELATES TO: KRS 216.510(1), 216B.042, ~~218A.060~~[~~218A.070~~], 218A.180, 218A.200, 21 C.F.R. 290.10, 1306.05, 1306.11-1306.14

STATUTORY AUTHORITY: KRS 194A.050[~~194.050~~], ~~218A.180(1), 218A.250~~[~~EO-96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY:[Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 218A.250 requires[~~directs~~] the Cabinet for Health and Family Services to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances.[The purpose of] This administrative regulation permits[is to permit] the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via oral authorization for immediate administration or by facsimile[, on a limited basis, in order] to facilitate the delivery of medications to certain patients whose need for medication shall be initiated or changed[needs change] quickly[and whose prescription should be communicated rapidly]. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances if requested by the patient or prescribing practitioner to [certain] patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

Section 1. Definitions. (1) "Hospice" means a hospice program licensed pursuant to KRS 216B.042[by the Cabinet for Health Services].

(2) "Immediate administration" means an emergency situation in which the prescribing practitioner determines the following criteria exists for the purposes of authorizing an oral prescription for a Schedule II controlled substance:

(a) Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user;

(b) No appropriate alternative treatment is available, including

administration of a drug that is not a Schedule II controlled substance; and

(c) It is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance prior to the dispensing.

(3) "Long-term care facility" or "LTCF" is defined by KRS 216.535(1)(a) and, pursuant to KRS 218A.180(1), shall not include a family care home or personal care home [means a nursing home, skilled nursing facility, nursing facility as defined in Pub.L. 100-203, intermediate care facility, or intermediate care facility for the mentally retarded].

Section 2. Oral Prescription Only for Immediate Administration.

(1) A pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization from a prescribing practitioner under the following conditions:

(a) Pursuant to KRS 218A.180(1), the prescription shall be needed for immediate administration to a patient enrolled in a hospice program or a resident of a long-term care facility;

(b) The quantity prescribed and dispensed shall be limited to the amount adequate to treat the patient or resident during the period in which immediate administration is necessary; and

(c) The prescribing practitioner personally communicates the oral prescription.

(2) Except for the signature of the prescribing practitioner, the prescription shall:

(a) Be immediately reduced to writing by the pharmacist in accordance with KRS 218A.180(6); and

(b) Contain all information required by KRS 218A.180(5) and 21 C.F.R. 1306.05.

(3) If the prescribing practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the oral authorization came from a registered practitioner, which may include:

(a) A callback to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory; or

(b) Other good faith efforts to ensure the practitioner's identity.

(4) Within seven (7) days after authorizing an oral prescription for immediate administration, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist and demonstrate compliance with the requirements established in this subsection.

(a) In addition to conforming to the requirements of KRS 218A.180(5) and 21 C.F.R. 1306.05, the prescription shall:

1. Have written on its face "Authorization for Emergency Dispensing" and the date of the oral order; and

2. Be delivered to the pharmacist:

a. In person;

b. By mail; or

c. Electronically pursuant to paragraph (d) of this subsection.

(b) If delivered by mail, the prescription shall be postmarked within seven (7) days of the date of the oral prescription for immediate administration.

(c) Upon receipt, the dispensing pharmacist shall attach the paper prescription to the oral prescription for immediate administration that was earlier reduced to writing.

(d) For electronic prescriptions, the pharmacist shall annotate the record of the prescription with the:

1. Original authorization; and

2. Date of the oral order.

(e) If the prescribing practitioner fails to deliver a written prescription to the pharmacist in accordance with this subsection, the pharmacist shall notify the nearest Drug Enforcement Administration (DEA) office.

(f) Failure of the pharmacist to comply with paragraph (e) of this subsection shall void the authority conferred by this subsection to dispense without a written prescription of a prescribing practitioner.

(5) A central fill pharmacy shall not be authorized under subsection (4) of this section to prepare prescriptions for a Schedule II controlled substance upon receiving an oral authorization from a retail pharmacist or a prescribing practitioner.

(6) Dispensing a Schedule II controlled substance beyond the

period necessary for immediate administration shall be pursuant to a written prescription signed by the prescribing practitioner.

Section 3. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05, [and] 902 KAR 55:080, and 902 KAR 55:105, Section 2, for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05, [and] 902 KAR 55:080, and 902 KAR 55:105, Section 2, for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3)(a) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05, [and] 902 KAR 55:080, and 902 KAR 55:105, Section 2, for a Schedule II controlled substance for a hospice patient may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(b) The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

(4)[(a)] The facsimile prescription shall:

(a) Serve as the original written prescription for the purposes of subsections (1) to (3) of this section and as allowed, [required] by KRS 218A.180(1) for the dispensing of a Schedule II controlled substance; and

(b) Be maintained in the same manner as an original prescription. [(b) Within seven (7) calendar days after transmitting a facsimile prescription for a Schedule II controlled substance, the prescribing practitioner shall deliver the original written prescription to the dispensing pharmacy.]

(c) A practitioner who fails to deliver the original written prescription within the period specified in paragraph (b) of this subsection shall be deemed to have violated KRS 218A.1404(3).]

Section 4[3]. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsections [subsection] (2) and (3) of this section, a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity called for in a written prescription or oral prescription for immediate administration as authorized by Section 2 of this administrative regulation [prescribed];

(b) Makes a notation of the quantity dispensed;

1. On the face of the written prescription;

2. In the written record of the oral prescription for immediate administration; or

3. In the electronic prescription record; and

(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. If the remaining portion is not or cannot be filled within the seventy-two (72) hour period, the pharmacist shall notify the prescribing practitioner. No further quantity shall be dispensed without a new written prescription.

(2) A [written] prescription for a Schedule II controlled substance written for a patient in a long-term care facility [(LTCF)] or for a patient with a documented terminal illness may be dispensed in partial quantities, including [but not limited to] individual dosage units, if:

(a) The pharmacist records on the [face of the] prescription whether the patient is "terminally ill" or an "LTCF patient";

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;

2. The quantity dispensed;

3. The remaining quantity authorized to be dispensed; and

4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is

terminally ill ~~because~~, since both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient;

(d) The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed; ~~and~~

(e) The partial dispensing occurs at the pharmacy where the original prescription is on file; and

(f) No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

(3) For a patient who is not terminally ill or a resident of a long-term care facility, a written prescription for a Schedule II controlled substance may be dispensed in partial quantities in accordance with the requirements established in this subsection.

(a) The partial dispensing shall be requested by the patient or the prescribing practitioner who issued the prescription.

(b) ~~Dispensing shall not occur~~~~No dispensing occurs~~ beyond thirty (30) days from the date of issuance of the prescription.

(c) The pharmacist shall comply with requirements established in subsection (2)(b), (d), and (e) of this section.

(4) The information required by this section pertaining to current Schedule II prescriptions may be maintained in a computerized system if the system has the capability to permit:

(a) Output (display or printout) of the:

1. Original prescription number;

2. Date of issue;

3. Identification of the prescribing practitioner;

4. Identification of the patient;

5. Address of the long-term care facility, hospital, or residence of the patient, if applicable;

6. Identification of medication authorized, including:

a. Dosage;

b. Form;

c. Strength; and

d. Quantity;

7. Listing of the partial fillings that have been dispensed under each prescription; and

8. Information required in 21 C.F.R. 1306.13(b);

(b) Immediate (real time) updating of the prescription record each time a partial filling of the prescription is conducted; and

(c) Retrieval of partially filled Schedule II prescription information that is the same as required by KRS 218A.180(7) for Schedule III and IV prescription refill information.

(5) If a record keeping system is being used that does not permit refills of Schedule II controlled substances, a new prescription number for the partial dispensing shall be permitted.

(6) A prescription that is partially filled and does not comply with the requirements of subsection (1) or (2) of this section shall be deemed to have been filled in violation of KRS 218A.200(3), (4) and 21 C.F.R. 1306.13.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

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CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 14, 2017)**

907 KAR 23:010. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, ~~447.512-447.518~~~~447.331, 447.332, 447.333, 447.334~~, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), ~~205.560~~, 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of outpatient drugs through the Medicaid outpatient pharmacy program for fee-for-service recipients and managed care enrollees.

Section 1. Covered Drugs. A covered drug shall be:

(1) Medically necessary;

(2) Approved by the FDA;

(3) Prescribed for an indication that has been approved by the FDA or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use;

(4) A rebateable drug; and

(5) A covered outpatient drug.

Section 2. Diabetic Supplies. Except if Medicare is the primary payer, the department shall cover the diabetic supplies listed in this section via the department's pharmacy program and not via the department's durable medical equipment program established in 907 KAR 1:479:

(1) A syringe with needle (sterile, 1cc or less);

(2) Urine test or reagent strips or tablets;

(3) Blood ketone test or reagent strip;

(4) Blood glucose test or reagent strips;

(5) Calibrating solutions;

(6) Lancet device;

(7) Lancets; or

(8) Home blood glucose monitor.

Section 3. Tamper-Resistant Prescription Pads. (1) Each covered drug or diabetic supply shall be prescribed on a tamper-resistant prescription pad, except if the prescription is:

(a) An electronic prescription;

(b) A faxed prescription; or

(c) A prescription telephoned by a prescriber or authorized agent.

(2) To qualify as a tamper-resistant prescription, the prescription pad shall contain one (1) or more of each industry-recognized feature designed to prevent:

(a) Unauthorized copying of a completed or blank prescription form;

(b) The erasure or modification of information written by the prescriber on the prescription; and

(c) The use of counterfeit prescription forms.

Section 4. Kentucky Medicaid Fee-for-Service Outpatient Drug List.

(1) The department shall maintain each Outpatient Drug List to include drug coverage and availability information in the following formats:

(a) Kentucky Medicaid Provider Drug Portal Lookup, which shall be an online searchable drug database that functionally affords users the ability to perform a search of the Kentucky specific fee-for-service drug formulary for the purpose of ascertaining formulary status, drug coverage, and other plan limitations (prior authorization, quantity limits, step therapy, and diagnosis) associated with a drug;

(b) Kentucky Preferred Drug Listing (PDL), which shall be a listing of selected drugs available to fee-for-service recipients that have been included based on proven clinical and cost effectiveness and that prescribers are encouraged to prescribe if medically appropriate;

(c) Physician Administered Drug List (PAD), which was

formerly known as the Physician Injectable Drug List (PIDL), and which shall indicate the list of physician administered drugs that can be billed to the fee-for-service medical benefit using appropriate Healthcare Common Procedure Coding System codes, National Drug Codes, and appropriate units;

(d) Over-the-Counter (OTC) Drug List, which shall be a list of OTCs that, if prescribed, are eligible for fee-for-service coverage and reimbursement through the pharmacy benefit;

(e) Covered Prescription Cold, Cough, and Vitamin Product List, which shall indicate the legend drugs that, if prescribed and FDA indicated for the intended use, are eligible for fee-for-service coverage and reimbursement through the pharmacy benefit;

(f) Long Term Care Per Diem List, which shall indicate OTC drugs that, if provided to a Medicaid nursing facility service recipient, are included in the nursing facility's standard price or daily per diem rate, and are not otherwise reimbursed by the department;

(g) Maximum Quantity Limits List, which shall indicate covered drugs that have a quantity limit consistent with the maximum dosage that the FDA has approved to be both safe and effective; and

(h) Kentucky Medicaid Diagnosis Drug List, which shall indicate covered drugs that require a diagnosis code or a prerequisite to therapy, or both.

(2)/(3) Each Outpatient Drug List shall be updated by the department at least quarterly or otherwise as needed.

(3)/(4) Each Outpatient Drug List shall be accessible through the department's pharmacy webpage.

Section 5. Exclusions to Coverage. The following drugs shall be excluded from coverage and shall not be reimbursed:

(1) A drug that the FDA considers, **by way of a final determination**, to be:

(a) A less-than-effective drug; or

(b) Identical, related, or similar to a less-than-effective drug;

(2) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered by an Outpatient Drug List:

(a) A drug if used for anorexia, weight loss, or weight gain;

(b) A drug if used to promote fertility;

(c) A drug if used for cosmetic purposes or hair growth;

(d) A drug if used for the symptomatic relief of cough and colds;

(e) A vitamin or mineral product other than prenatal vitamins and fluoride preparations;

(f) An OTC drug provided to a Medicaid nursing facility service recipient and included in the nursing facility's standard price or daily per diem rate;

(g) A drug that the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

(h) A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the FDA;

(3) A drug that is not rebateable, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(4) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(5) A drug for which the department requires prior authorization if prior authorization has not been approved;

(6) A drug that shall no longer be dispensed by a pharmacy provider because it has reached the manufacturer's termination date or is 365 days past the manufacturer's obsolete date; and

(7) Investigational drugs or drugs **being used for investigational uses or uses not otherwise supported by documentation found in official compendia or peer-reviewed medical literature[utilized for non-FDA indications or other investigational treatments]**.

Section 6. Limitations to Coverage. (1) All dispensing and

administration of covered drugs shall comply with applicable federal and state law.

(2) Refills.

(a) A controlled substance in Schedule II shall not be refilled.

(b) If authorized by a prescriber, a prescription for a:

1. Controlled substance in Schedule III, IV, or V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

2. Noncontrolled substance, except as provided in subsection (3)(a) of this section, may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) Days Supply. For each initial fill or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is indicated as a noncontrolled maintenance drug per the department's nationally recognized comprehensive drug data file as a drug exempt from the thirty-two (32) day dispensing limit, in which case the pharmacist shall dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on a Kentucky Medicaid prior authorization request form and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist shall dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; or

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit, and it is not feasible for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply.

(4) A refill of a prescription shall not be covered unless at least ninety (90) percent of the prescription time period has elapsed.

(5) Compounded Drugs. The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs.

(6) Emergency Fills. In an emergency situation, a pharmacy provider may dispense an emergency supply of a prescribed drug to a recipient in accordance with this subsection.

(a) An emergency situation shall exist if, based on the clinical judgment of the dispensing pharmacist, it would reasonably be expected that a delay in providing the drug to the recipient would place the recipient's health in serious jeopardy or the recipient would experience substantial pain and suffering.

(b) At the time of dispensing the emergency supply, the pharmacist shall:

1. Submit a prior authorization request form to the department using the urgent fax number or the department's pharmacy webpage; or

2. Notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department.

(c) An emergency supply shall not be provided for:

1. An OTC drug;

2. A controlled substance; or

3. A drug excluded from coverage by this administrative regulation.

(d) The quantity of an emergency supply shall be:

1. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

2. The amount prescribed if the drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is not feasible for the pharmacist to dispense in a smaller quantity.

Section 7. Confirming Receipt of Prescription. (1) A recipient, or a designee of the recipient, shall sign his or her name in a format that allows the signature to be reproduced or preserved by the pharmacy provider confirming that the recipient received the

prescription.

(2) A pharmacy provider shall maintain, or be able to produce a copy of, the recipient's signature referenced in subsection (1) of this section for six (6) years.

Section 8. Exemptions to Kentucky Enrolled Prescriber Requirements. The department shall reimburse for a full prescription or an emergency supply of a prescription, prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines it is in the best interest of the recipient to receive the prescription.

Section 9. Utilization Management. Utilization management techniques shall be applied by the department to support medically appropriate and cost effective access to covered drugs and shall include prior authorization, step therapy, quantity limitations, generic substitution, therapeutic substitution protocols, and clinical edits. (1) Step therapy.

(a) The department may implement step therapy drug treatment protocols by requiring the use of a medically-appropriate drug that is available without prior authorization before the use of a drug that requires prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from step therapy based on documentation that a drug available without prior authorization:

1. Was used and was not an effective medical treatment or lost its effectiveness;
2. Is reasonably expected to not be an effective medical treatment;
3. Resulted in, or is reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or
4. Is medically contraindicated.

(2) Prior authorization.

(a)1. If prior authorization is required for a drug, the applicable prior authorization request form shall be completed and submitted to the department by fax, mail service, telephone, or the department's pharmacy web portal.

2. The applicable prior authorization request form shall be the:

a. Kentucky Medicaid Substance Use Treatment Pharmacy Prior Authorization Form for Buprenorphine Products if prior authorization is being requested for buprenorphine products for substance use treatment; or

b. Kentucky Medicaid Pharmacy Prior Authorization Form if the prior authorization is being requested for a drug that is not a buprenorphine product for substance use treatment.

(b) If a recipient presents a prescription to a pharmacy provider for a drug that requires prior authorization, the pharmacist shall:

1. Complete and submit a prior authorization request form in accordance with this subsection; or

2. Notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization.

a. If the prescriber indicates that an alternative available without prior authorization is acceptable and provides a new prescription, the pharmacist shall dispense the alternative.

b. If the prescriber indicates that an alternative available without prior authorization has been tried and failed or is clinically inappropriate or if the prescriber is unwilling to consider an alternative, the pharmacist shall request that the prescriber obtain prior authorization from the department.

(c) The department's notification of a decision on a request for prior authorization shall be made in accordance with this paragraph.

1. If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax, or the department's pharmacy web portal to the party requesting the prior authorization and, if known, to the pharmacist.

2. If the department denies a prior authorization request, the department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or, if notification cannot be made by fax or telephone, by mail to the party who requested the prior

authorization.

(d) Prior authorization time limits.

1. The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 calendar days.

2. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

Section 10. Drug Review Process. The drug review process to determine if a drug requires prior authorization or other utilization management, or is otherwise restricted or excluded by the department, shall be in accordance with this section. (1) Drug review considerations. Drug review shall be based upon available and relevant clinical information to assess appropriate use of medications and include:

(a) A review of clinically-significant adverse side effects, drug interactions and contraindications, and an assessment of the likelihood of significant abuse of the drug; and

(b) An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and if the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of the drug after federal rebate and supplemental rebates have been subtracted.

(2) New drugs. Except as provided by subsections (3) and (4) of this section, upon initial coverage by the Kentucky Medicaid Program, a drug that is newly approved for marketing by the FDA under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity and not otherwise excluded shall be subject to prior authorization in accordance with KRS 205.5632.

(3) Product line. If a drug, which has been determined to require prior authorization, becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug, the new strength, package size, or other form shall require prior authorization.

(4) Generic equivalency for prescribed brands. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(5) Advisory recommendation. Drugs subject to review by the Pharmacy and Therapeutics Advisory Committee (P&T Committee) shall be reviewed in accordance with KRS 205.564 and this administrative regulation. Upon review, the P&T Committee shall make a recommendation to the department regarding utilization management of the drug including prior authorization and the recommendation shall be advisory to the commissioner in making the final determination.

(6) The department may exclude from coverage or require prior authorization for a drug that is subject to coverage limitations in accordance with 42 U.S.C. 1396r-8(d).

Section 11. Pharmacy and Therapeutics Advisory Committee (P&T Committee) Meeting Procedures. P&T Committee meetings, processes, and procedures shall be in accordance with KRS 205.564 and this administrative regulation. (1) Drug review considerations. The P&T Committee shall consider the drug review information specified in Section 10(1) of this administrative regulation when developing recommendations.

(2) Meeting processes and procedures.

(a) Public presentations. A public presentation at a P&T Committee meeting shall comply with this paragraph.

1. A presentation shall be limited to an agenda item.

2. A verbal presentation by pharmaceutical industry representatives shall not exceed three (3) minutes in aggregate per drug per drug manufacturer with two (2) additional minutes allowed

for questions from the P&T Committee. Pharmaceutical industry representatives shall be limited to presenting:

- a. Information on a new product; or
- b. New information on a previously reviewed current agenda topic (package insert changes, new indications, or peer-reviewed journal articles).

3. A verbal presentation by an individual other than a pharmaceutical industry representative shall not exceed five (5) minutes.

4. A request to make a verbal presentation shall be submitted in writing via fax or e-mail to the department no later than five (5) business days in advance of the P&T Committee meeting date.

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indications, or peer reviewed journal articles) shall be e-mailed to the department in a Microsoft compatible format or mailed to the department as a package including twenty-five (25) printed copies. All materials shall be received by the department no later than seven (7) business days prior to the P&T Committee meeting date.

(3) Postings. ~~[(a)]~~ P&T Committee meeting documents shall be published in accordance with KRS 205.564(6), and shall include the:

~~[(a)]~~ 1.] Meeting agenda;

~~[(b)]~~ 2.] Options, including any department recommendations, for drug review and drug review placements,

~~[(c)]~~ 3.] P&T Committee recommendations; and

~~[(d)]~~ 4.] Commissioner's final determination.

Section 12. Exceptions to P&T Committee Recommendations.

(1)(a) An interested party who is adversely affected by a recommendation of the P&T Committee may submit a written exception to the commissioner.

(b) The written exception shall be received by the commissioner within seven (7) calendar days of the date of the P&T Committee meeting at which the recommendation was made.

(c) Only information that was not available to be presented at the time of the P&T Committee meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the commissioner shall consider each recommendation of the P&T Committee and all exceptions that were filed in a timely manner prior to making a final determination.

Section 13. Final Determination. The commissioner shall issue and post a final determination in accordance with KRS 205.564(9) and (11). (1) A decision of the commissioner to remand any recommendation to the P&T Committee shall not constitute a final decision or final determination for purposes of an appeal pursuant to KRS Chapter 13B.

(2) If any recommendation of the P&T Committee is not accepted, the commissioner or commissioner's designee shall inform the P&T Committee of the basis for the final determination in accordance with KRS 205.564(9).

Section 14. Appeals. An appeal request shall:

(1) Be in writing;

(2) Be sent by mail, messenger, carrier service, or express-delivery service to the commissioner in a manner that safeguards the information;

(3) State the specific reasons the final determination of the commissioner is alleged to be erroneous or not based on the facts and law available to the P&T Committee and the commissioner at the time of the decision;

(4) Be received by the commissioner within the deadline established by KRS 205.564(12); and

(5) Be forwarded by the commissioner to the Division of Administrative Hearings of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 15. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and
(b) The person gives notice to the department by fax or email at least five (5) business days prior to the meeting.

(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required; or

(b) By an individual on a subject shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required.

(3) The proposed agenda shall be posted on the department's pharmacy webpage at least fourteen (14) calendar days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) calendar days of the manufacturer's actual notice of the final decision.

Section 16. Medicaid Program Participation Compliance. (1) A provider 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 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.

Section 17. 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 18. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 19. 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.

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Section 20. Appeal Rights. (1) An appeal of an adverse action taken 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.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Medicaid Substance Use Treatment Pharmacy Prior Authorization Form for Buprenorphine Products", 1-3-17; and

(b) "Kentucky Medicaid Pharmacy Prior Authorization Form", 1-3-17.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 10 a.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist,
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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 95:040. Radon Contractor Certification Program.

RELATES TO: KRS Chapter 13B, 211.180(1)(a), 211.9101 - 211.9135

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.9109, 211.9111, 211.9115, 211.9121, 211.9127, 211.9135(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet [211.9135(1) and (2) require the Cabinet for Health and Family Services to be the regulatory agency for the control of radon and radon activities in the Commonwealth of Kentucky, including laboratory analysis, mitigation, and measurements]. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes general requirements for the certification of an individual or laboratory to [individuals who] perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Definitions. (1) "AARST" means the American Association of Radon Scientists and Technologists.

(2) "ABIH" means the American Board of Industrial Hygiene.

(3) "AIHA" means the American Industrial Hygiene Association.

(4) "ANSI" means the American National Standards Institute.

(5) "ASTM" means ASTM International [(3) "ANSI-AARST" means those standard operating procedures or practices developed and maintained by the AARST Consortium on National Radon Standards for radon measurement, mitigation, or laboratory analysis]. [(4) "Commercial building" is defined by KRS 211.9101(7).

(5) "EPA" means the Environmental Protection Agency.]

(6) "Mitigation system" is defined by KRS 211.9101(21).

(7) ["Multi-family housing" means a commercial building with attached family dwellings that:

(a) Are occupied by residents who are primarily permanent in nature;

(b) Are greater than four (4) units or three (3) stories in height; and

(c) Contain an independent heating, ventilation, and air conditioning (HVAC) system.

(8) "NRPP" means the National Radon Proficiency Program.

(8) "NRSB" means the National Radon Safety Board.

(9) [(9) "NRSB" means the National Radon Safety Board.

(10) [(10) "Pecuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

(10) [(9) "WHO" means the World Health Organization [(14) "Residential building" is defined by KRS 211.9101(28)].

Section 2. Certification Requirements. (1) A person shall be eligible to be certified as a radon measurement contractor or a radon mitigation contractor if the individual:

(a) Submits to the cabinet:

1. A completed [An application on cabinet Form] DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. A two (2) inch by two (2) inch passport photo;

3. Verification of completion of a cabinet-approved [an AARST-NRPP or NRSB] course and exam pursuant to Section 5(3) of this administrative regulation;

3. [4.] The fee [fees] established in Section 3(2) of this administrative regulation;

4. [5.] A quality assurance plan that meets the requirements established in Section 4(1) or [and] (2) of this administrative regulation; and

5. [6.] Evidence of financial responsibility in accordance with KRS 211.9109(1)(f); and

(b) Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky.

(2) A radon laboratory shall be eligible for certification if the entity:

(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;

(b) Submits to the cabinet:

1. A completed [An application on cabinet form] DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. The fee [fees] established in Section 3(2) of this administrative regulation; and

3. A quality assurance plan as established in Section 4(3) of this administrative regulation; and

(c) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity.

(3) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall:

(a) Maintain a separate certificate [license] for each discipline; and

(b) Adhere to the limitations established in KRS 211.9117(1) and (2).

(4) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party.

(5) A certified radon measurement contractor employee working exclusively for a certified radon laboratory shall not be required to meet the insurance and quality assurance requirements established [outlined] in subsection (1) of this section.

Section 3. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable; and

(b) Submitted with an application for initial certification or certification renewal; and

(c) Made payable to the Kentucky State Treasurer.

(2)(a) The fee for initial certification shall be \$250.

(b) The annual renewal fee shall be \$250.

(c) The annual fee for reciprocity meeting the requirements of KRS 211.9123 shall be \$250.

(d) The fee for a duplicate certificate shall be twenty (20) dollars.

(e) [(d)] The fee for late renewal shall be \$100.

(f) The annual fee for inactive certification status shall be \$100.

Section 4. Quality Assurance Plan and Standard Operating Procedures. (1) A person certified as a radon measurement contractor shall submit for cabinet approval a quality control program plan that includes:

(a) A [quality] statement committing to provide quality work;

(b) A [description of the management and structure of the organization];

(c) A [listing of personnel and personnel qualifications and training];

(c) [(d)] A description of types of radon measurements performed and other related services offered;

(d) [(e)] A description of measurement types and devices the measurement contractor will utilize in conducting measurements;

(e) [(f)] A list of equipment serial numbers, model numbers, and calibration records used in performing analytical analysis;

(g) A list of manufacturers and test types used while conducting measurement for laboratory analysis;

(h) A worker protection program that includes the methods

utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;

(i) Procedures for procuring and storing measurement devices and materials;

(j) Procedures for maintaining documents and records;

(k) Procedures for calibrating and testing instruments;

(l) A corrective action program;

(m) Examples of forms, reports, and correspondence used in communications;

(n) A description of the quality assurance measures including the:

1. Evaluation criteria; and

2. Frequency of the evaluations;

(o) A statement of compliance with cabinet-approved[ANSI-AARST] standard operating procedures pursuant to Section 5(3) of this administrative regulation; and

(p) The location where records are retained in accordance with KRS 211.9131(3).

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

(a) A[quality] statement committing to provide quality work;

(b) A description of the management and structure of the organization;

(c) A listing of personnel and personnel qualifications and training;

(d) A description of all types of radon mitigation methods performed and other related services offered;

(e) A description of diagnostic testing methods utilized in designing mitigation systems; (f) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;

(g) Procedures for maintaining documents and records;

(h) Procedures for calibrating and testing instruments;

(i) A corrective action program;

(k) Examples of forms, reports, and correspondence used in communications;

(l) A description of the quality assurance measures including the:

1. Evaluation criteria; and

2. Frequency of the evaluations;

(m) A statement of compliance with cabinet-approved [ANSI-AARST] standard operating procedures pursuant to Section 5(3) of this administrative regulation.

(3) A certified radon laboratory shall submit to the cabinet a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of laboratory services performed and other related services offered;

(d) Documentation of enrollment and good standing within an independent laboratory accreditation program; and

(e) A requirement that all radon laboratory analyses shall be conducted in compliance with applicable state and federal laws.

(4) A [person certified as a radon measurement contractor shall conduct measurements in accordance with the following standard operating procedures and quality assurance protocols:

(a) Residential building measurement: ANSI-AARST Protocols for Radon Measurements in Homes (MAH 2005);

(b) Multi-family building measurement: ANSI-AARST Protocol for Conducting Radon and Radon-Decay Product Measurements in Multifamily Buildings (MAMF-2012); and

(c) Quality assurance protocols: EPA Protocols for Radon and Radon-Decay Product Measurements in Homes (EPA 402-R-92-003).

(4) A person certified as a radon mitigation contractor shall conduct mitigations in accordance with the following standards:

(a) Residential building active mitigation: ANSI-AARST Active Soil Depressurization Radon Mitigation Standards (ASD-RMS) for Low Rise Residential Buildings;

(b) Multi-family active mitigation: ANSI-AARST Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013); and

(c) Residential building passive mitigation: ANSI-AARST Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013).

(5) All mitigation system[systems] shall:

(a) Be designed to reduce a radon concentration in each area within the footprint of the building as low as reasonably achievable (ALARA); or[and]

(b) Achieve a radon level below the U.S. Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.

(5) Prior to mitigation, educational material about radon levels shall be provided to the client.

(6) [Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is achieved.

(7) Upon modification to a component of the quality assurance program plan, the radon measurement or mitigation contractor shall resubmit the plan to[for approval by] the cabinet [prior to implementation of the modifications].

(7) If a deviation from cabinet-approved operating procedures occurs, the measurement or mitigation contractor shall document the reason for the deviation in the inspection report provided to the client.

Section 5. Training and Continuing Education Requirements.

(1) Continuing Education.

(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.

(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year.

(c) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.9111 [211.9144], 211.9115, or 211.9127.

(d) [A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.

(e) Continuing education units shall be obtained from a cabinet-[NRPP or NRSB] approved course in accordance with subsection (3) of this section[courses].

(2) Certification Courses.

(a) Measurement contractor initial certification courses shall be a minimum of sixteen (16) hours of in-person[supervised] instruction.

(b) Mitigation contractor initial certification courses shall[be]:

1. Be a minimum of sixteen (16) hours of in-person[supervised] instruction; and

2. Include an additional four (4) hours of hands-on field work at a mitigation site.

(3) A radon training course or standard operating procedure shall be cabinet-approved if issued by the:

(a) AARST;

(b) ABIH;

(c) AIHA;

(d) ANSI;

(e) ASTM;

(f) NRPP;

(g) NRSB; or

(h) [g)] WHO[(c) Measurement and mitigation contractors shall obtain an additional one (1) hour of course content on the requirements of this administrative regulation and KRS 211.9101 through 211.9135].

Section 6. Renewal of Certification. (1) Each annual certification shall expire on June 30.

(2) A person seeking renewal of certification shall:

(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and

(b) Submit to the cabinet a minimum of thirty (30) calendar days prior to certification expiration:

1. A completed renewal application on[cabinet Form] DFS-375, Application for Certification for Radon Contractors and Laboratories[, a minimum of thirty (30) calendar days prior to certification expiration. Form DFS-375 shall be deemed submitted

on the date that it is received by the cabinet];

2. The ~~fee[fees]~~ established in Section 3 of this administrative regulation;

3. Proof of fulfillment of continuing education requirements as established in Section 5(1) of this administrative regulation;

4. An updated quality assurance plan that meets the applicable requirements established in Section 4 of this administrative regulation; and

5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f).

(3) A certification[Certifications] not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3(2)(d) of this administrative regulation.

(4) A certification[Certifications] not renewed within ninety (90) days after the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).

Section 7. Termination of Certification and Inactive Certification. (1) A certified radon measurement contractor or radon mitigation contractor shall notify[be responsible for notifying] the cabinet in writing upon electing to terminate certification.

(2) A person previously certified by the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain certification may request and be granted inactive status.

(a) If inactive status is granted, the person shall:

1. Pay the certification fee established in Section 3(2)(e)[(b)] of this administrative regulation; and

2. Be exempt from the continuing education requirements.

(b) A certified radon contractor on inactive status may petition the cabinet for renewal of active certification. If a certified radon contractor on inactive status wishes to renew active certification, the petitioner shall meet the requirements of this administrative regulation.

Section 8. Certification Denial, Suspension, or Revocation. A certification[Certifications] shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 9. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on a semi-annual[quarterly] basis after a:

(a) Radon or radon progeny test;

(b) Radon mitigation activity;

(c) Modification to any component of the radon contractor's quality assurance program plan; or

(d) Request from the cabinet.

(2) The report shall include the:

(a) ZIP Code or [ef] location of the building; and

(b) ~~Name and telephone number of the owner or owners of the building where the radon testing or mitigation activities were conducted; and~~

(c) Results of [any] tests performed.

(3) The results for each measurement conducted shall include the:

(a) ~~Method used for radon or radon decay product testing;~~

(b) ~~Conditions under which the test or tests were conducted;~~

(c) ~~Location or locations within the building where the test or tests were conducted;~~

(d) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;

(b) ~~(e) Date on which the test or tests were conducted; and~~

(c) ~~(f) Purpose of the test or tests.~~

(4) The mitigation report shall include the:

(a) Type of structure measured[mitigated];

(b) Type of mitigation system installed;

(c) Location of mitigation system within the structure;

(d) Post-mitigation measurements;

(e) ~~Floor plan of the structure with the location of a mitigation system; and~~

(f) Diagnostic and communication testing].

Section 10. Administrative Hearings. A person, business entity,

or analytical laboratory[Persons, business entities, and analytical laboratories] shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 11. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

Section 12. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

(a) ~~Form "DFS-375, Application for Certification for Radon Contractors and Laboratories", 8/2017[5/2017], is incorporated by reference [9/2012];~~

(b) ~~"Protocols for Radon Measurements in Homes (MAH 2005)", 9/2005;~~

(c) ~~"Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012)", 2012;~~

(d) ~~"Protocols for Radon and Radon Decay Products Measurements in Homes (EPA 402-R-92-003)", 5/1993;~~

(e) ~~"Active Soil Depressurization Radon Mitigation Standards (ASD-RMS) for Low-Rise Residential Buildings", 6/2006;~~

(f) ~~"Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013)", 2013; and~~

(g) ~~"Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013)", 12/2013].~~

(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[40602], Monday through Friday, 8 a.m. to 4:30 p.m.

HIRAM C. POLK, JR., MD

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: August 8, 2017

FILED WITH LRC: August 14, 2017 at 2 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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: Laura Begin, Laura.Begin@ky.gov, phone 502-564-6746, ext. 3448; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the certification of an individual or laboratory to perform radon measurement, mitigation, or analysis.

(b) The necessity of this administrative regulation: KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135, which contains the statutory requirements for radon measurement, mitigation, laboratory analysis, and quality control.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is consistent with the requirements contained in KRS 211.9107 to 211.9135.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce the radon certification program and requirements contained in statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the National Radon Safety Board as an optional organization provided radon training courses or standard operating procedures that qualify as being cabinet-approved. Reciprocity was included in the regulation, as allowed by KRS 211.9123. The fee for inactive certification was reduced from \$250 to \$100 per year and clarification was made as to whom the fee is made payable to. The form was amended slightly to clarify

reciprocity and reflect the change in the inactive status fee. These changes were made in response to comments received.

(b) The necessity of the amendment to this administrative regulation: Comments on the proposed administrative regulation requested clarification on a number of issues, addressed in this amended after comments version.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment administrative regulation is consistent with the requirements of KRS 211.9107 to 211.9135.

(d) How the amendment will assist in the effective administration of the statutes: Commenters requested clarification on a number of issues, addressed in this amended after comments version of the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radon Advisory Committee stated that there are approximately 30 radon measurement businesses, 20 radon mitigation businesses, and 20 radon laboratories in Kentucky. These are required by statute to be certified through this certification program. According to the Radon Advisory Committee, there are approximately 350 home inspection businesses that may want to perform radon measurements. Five known professional organizations are impacted by this administrative regulation – American Association of Radon Professionals, Kentucky Real Estate Inspection Association, Kentucky Home Builders Association, National Environmental Health Association, and National Radon Safety Board. There are 120 local health departments that may have staff trained for radon measurement and radon mitigation system approval. The promulgating body, the Cabinet for Health and Family Services, is the radon control agency for the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Compliance with this administrative regulation by regulated entities will be easier to obtain and maintain due to the elimination or reduction of requirements included in this amendment. The amendment will also result in less administrative burden to the promulgating body.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no cost associated with this amendment, however certification fees are maintained.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Active certification and compliance with state law.

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

(a) Initially: Based on the number of regulated entities provided by the Radon Advisory Committee, the certification program will cost the administrative body approximately \$200,000 initially.

(b) On a continuing basis: Based on the number of regulated entities provided by the Radon Advisory Committee, the projected costs of administering this program for subsequent years is expected to be approximately \$175,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The certification fees contained in this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation contains certification fees, not amended in this amendment.

(9) TIERING: Is tiering applied? No. Radon measurement or mitigation professionals and laboratories are required to be certified with the specific exceptions listed in KRS 211.9107.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is the radon control agency for the Commonwealth. This amendment will lessen the administrative burden on the agency. Local health departments may be requested to investigate complaints.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135.

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 of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are approximately 70 entities projected to request certification at \$250/year. Expected revenue would be \$17,500 per 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? Approximately \$17,500 per year.

(c) How much will it cost to administer this program for the first year? Based on the number of regulated entities provided by the Radon Advisory Committee, the cost of initial trainings, two full-time field inspectors, and an administrative person to operate this program is projected to be approximately \$200,000 per year.

(d) How much will it cost to administer this program for subsequent years? Based on the number of regulated entities provided by the Radon Advisory Committee, for subsequent years, the cost is projected to be approximately \$175,000 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amended After Comments)

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)
STATUTORY AUTHORITY: KRS 1 94A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the SNAP Employment and Training Program (E&T).

Section 1. Definitions. (1) ~~["Exempt" means excused by the agency from participation in the E&T.~~

(2) "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(2)(3) "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. ~~Work Registration.~~ (1) ~~Unless exempt from work requirements as specified in subsection (4) of this section, a household member shall register for work:~~

(a) ~~At the time of initial application for SNAP; and~~

(b) ~~Every twelve (12) months following the initial application.~~

(2) ~~Work registration shall be completed by the:~~

(a) ~~Member required to register; or~~

(b) ~~Person making application for the household.~~

(3) ~~Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person may be an:~~

(a) ~~Ineligible alien; or~~

(b) ~~Individual disqualified for:~~

1. ~~Refusing to provide or apply for a Social Security number; or~~

2. ~~An intentional program violation.~~

(4) ~~An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.~~

(5) ~~A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).~~

(6) ~~After registering for work, a nonexempt household member shall:~~

(a) ~~Respond to a cabinet request for additional information regarding employment status or availability for work;~~

(b) ~~In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or~~

(c) ~~In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, if assigned by the cabinet.~~

(7) ~~A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).~~

(8) ~~The E&T worker shall explain to the SNAP applicant the:~~

(a) ~~Work requirements for each nonexempt household member;~~

(b) ~~Rights and responsibilities of the work-registered household members; and~~

(c) ~~Consequences of failing to comply.~~

Section 3. E&T Participation. (1) ~~(a) An individual may volunteer to~~ subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T Program.

(b) A voluntary participant in the E&T shall not be penalized by a discontinuance or reduction of SNAP benefits.

(2) ~~An E&T participant shall:~~

(a) ~~Complete an initial assessment interview;~~

(b) ~~Be placed in an approved SNAP E&T component[:~~

1. ~~VEST; or~~

2. ~~WEP]; and~~

(c) ~~1. Complete and return to the cabinet[a FSET-108, Job Search Contact Report, or] a FSET-145, Employment and Training Program Activity Report, in order to verify participation; or~~

2. Enter participation information in the case management system to be verified by a SNAP E&T provider.

(3) ~~Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:~~

(a) ~~Incurs or plans to incur a transportation expense in order to participate; and~~

(b) ~~Completes and returns to the cabinet~~ **verification of the job search in accordance with Section 3(3)(b) and (c) of this administrative regulation or reports participation in accordance with subsection (2)(c) of this section[a FSET-108, Job Search Contact Report, or a FSET-145]** stating the anticipated need.

(4) ~~A transportation payment shall not be made if the participant~~

is not in compliance with an E&T activity in accordance with this administrative regulation.

Section 3[4]. Components. (1) A county offering the E&T Program shall offer the following services and activities:

(a) The VEST Program consisting of:

1. Vocational school; or

2. On-the-job training; and

(b) The WEP Program consisting of:

1. Job search; and

2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and

(b) Participate in the WEP component until a VEST placement is available.

(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;

(b) Participate in the initial thirty (30) days of job search, **including twelve (12) contacts with prospective employers;**

(c) Complete and file with the cabinet **verification of the job search in accordance with paragraph (b) of this subsection[the FSET-108];**

(d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and

(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:

1. Accepting the offer of a work site placement; and

2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by the participant's monthly SNAP allotment divided by the current federal minimum wage.

(5) If the SNAP household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:

(a) SNAP allotment by the number of individuals who are subject to the work requirement; and

(b) Individual pro rata share of the SNAP allotment by the current federal minimum wage. [Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:

(a) The participant shall be issued a notice informing the recipient of the need for conciliation due to noncompliance; and

(b) A conciliation period shall be initiated.

(2) The conciliation period shall be used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:

(a) Determine if the participant demonstrates good cause for noncompliance;

(b) Encourage the participant to resume an E&T Program activity; or

(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.

(4) If the participant resumes the E&T Program activity, a disqualification shall not be imposed.

(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with:

1. Work registration requirements as established in Section 2 of this administrative regulation; or

2. E&T requirements as established in Section 3 of this administrative regulation; or

(b) Household member has, as described in Section 8 of this administrative regulation, voluntarily:

1. Quit a job; or
2. Reduced his work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

- (a) Illness of the individual;
- (b) Illness of another household member requiring the presence of the individual;
- (c) A household emergency;
- (d) Unavailability of transportation; and
- (e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

- (a) A circumstance specified in subsection (2) of this section exists;
- (b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or
- (c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration or E&T program requirements; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

- (a) Date the individual complies; or
- (b) Lapse of the following time periods:
 1. Two (2) months for the first violation;
 2. Four (4) months for the second violation; or
 3. Six (6) months for the third or a subsequent violation.
- (3) Ineligibility shall continue until the ineligible member:
 - (a) Becomes exempt from the work registration; or
 - (b) 1. Serves the disqualification period specified in subsection (2) of this section; and
 2. Complies with the requirements of:
 - a. Work registration; or
 - b. The Employment and Training Program.
- (4) A disqualified household member who joins a new household shall:
 - (a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;
 - (b) Have income and resources counted with the income and resources of the new household; and
 - (c) Not be included in the household size if determining the SNAP allotment.

Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily and without good cause:

- (a) Quits a job:
 1. Of thirty (30) hours or more per week; and
 2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or
- (b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.

Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

- (a) Securing new employment with salary or hours comparable to the job quit;
- (b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 7(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in SNAP.]

Section 4[10]. Hearing Process. If aggrieved by an action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 5[11]. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 6[12]. Incorporation by Reference. (1) **"FSET-145, Employment and Training Program Activity Report", 10/17, is incorporated by reference.** ~~(The following material is incorporated by reference:~~

~~(a) "FSET-108, Job Search Contact Report", 10/17[12/15]; and~~

~~(b) "FSET-145, Employment and Training Program Activity Report", 10/17[12/15].]~~

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

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: August 8, 2017

FILED WITH LRC: August 14, 2017 at 2 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for SNAP E&T program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of SNAP E&T requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the requirements for SNAP E&T in accordance with 7 C.F.R. 273.7.

(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 regulation by making SNAP E&T voluntary and reorganizing work registration requirements and disqualifications into the administrative regulation governing the technical requirements for SNAP. In addition, the amendment updates material incorporated by reference and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will facilitate the establishment of a voluntary SNAP E&T program for all SNAP recipients, in addition to those able-bodied adults without

dependents in SNAP who must participate in an approved E&T activity or work as a condition of benefit receipt. Under a voluntary program, any SNAP recipient may choose to participate in and gain the benefits of an E&T activity. Individuals who volunteer to participate are motivated to find work and achieve self-sufficiency, and they are more open to discuss their past experiences, goals, and challenges and more ready and willing to accept help in achieving their goals. The expansion will help the state leverage additional resources and provide a larger array of E&T opportunities to promote a SNAP participant's job prospects and, ultimately, reduce reliance upon SNAP. The amendment is anticipated to change the perception of SNAP E&T from a punitive program aimed at helping participants meet a requirement to protect their eligibility to a program that helps participants help themselves become self-sufficient.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its modification of program requirements to facilitate voluntary participation in E&T by any SNAP participant.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its conformity with 7 C.F.R. 273.7.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2017, there are 299,418 households receiving Supplemental Nutrition Assistance Program benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will not create a cost to SNAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Any SNAP recipient, not just those able-bodied adults without dependents who must participate in an E&T activity or work as a condition of benefit receipt, can benefit from the E&T program and, ultimately, improve their job prospects and perhaps reduce their reliance upon SNAP. In the voluntary program, unlike the present-day program, an able-bodied adult without dependents, who is disqualified and then demonstrates compliance, can regain eligibility without serving a disqualification period. The amendment to this administrative regulation will allow the state to leverage additional resources and expand the array of E&T activities available statewide to all SNAP recipients.

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

(a) Initially: The amendment to this administrative regulation does not create additional, ongoing costs to the administering agency. Rather, the amendment may increase state and federal resources for and expand E&T activities statewide. The amendment also presents the possibility for reduced administrative burdens for the agency as a result of less staff time spent on determining E&T noncompliance, good cause, and issuing adverse notices to SNAP recipients.

(b) On a continuing basis: The amendment to this administrative regulation does not create additional costs to the administering agency. Rather, the amendment may increase state and federal resources for and expand E&T activities statewide.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation,

if new, or by the change if it is an amendment: There are no increases in fees or funding required with 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, nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

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

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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 no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or 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 Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

(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? SNAP does not directly generate any revenue. The cabinet may be able to qualify for additional federal reimbursement of SNAP E&T activities as a result of the programmatic changes supported through this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? SNAP does not directly generate any revenue. The cabinet may be able to qualify for additional federal reimbursement of SNAP E&T activities as a result of the programmatic changes supported through this administrative regulation.

(c) How much will it cost to administer this program for the first year? This amendment will not create any new or additional ongoing costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any new or additional ongoing costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

OFFICE OF THE GOVERNOR
Department of Veterans' Affairs
(Amendment)

17 KAR 3:020. ~~Charges~~[Maximum charge] for room and board, goods and services[care] at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the maximum monthly resident charge for room and care at state veterans' nursing homes.

Section 1. Definitions. (1) "Ancillary services" means services for which a separate charge is customarily made. Ancillary services include but are not limited to physical therapy, occupational therapy, speech therapy, laboratory procedures, x-ray services, oxygen services, optometry services, podiatry services, dentist services, audiology services, and pharmacy goods and services.

(2) "Department" or "KDVA" means the Kentucky Department of Veterans Affairs.

(3) "Non-routine goods or services" mean those that are directly identifiable with an individual resident and which are not customarily intended for use by all residents including such things as transportation, special activities, cable television services, pay-per-view channels, private or personal phone service, hospitalization, ambulance services, hearing aids, dentures, cosmetology or beautician services (other than basic haircuts), orthotic devices, and specialty care and equipment.

(4) "Nursing facility" means a state veterans' home (SVH) operated by the Kentucky Department of Veterans Affairs.

(5) "Private pay" means residents who pay for their nursing home care out of personal funds.

(6) "Private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements and does not have a roommate.

(7) "Resident" means a Kentucky veteran admitted to a state veterans' nursing facility.

(8) "Room and board" means the room, dietary services, social services, nursing services, basic laundry services, the use of equipment and facilities, and routine medical and surgical supplies.

(9) "Routine goods or services" mean those which are not identifiable to a particular individual resident but which are used by all residents.

(10) "Semi-private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements and does have a roommate.

(11) "Suite" means a private suite with a private bathroom including a shower that was built in accordance with the federal VA's community living center or small house design requirements.

Section 2. Charges at State Veterans Nursing Homes. (1) The private pay rate for room and board at a state veterans' nursing facility shall be according to the following schedule:

(a) Semi-private room - \$4,000/month;

(b) Private room - \$4,500/month; and

(c) Suite - \$5,000/month.

(2) The total monthly charge for a private pay resident shall be:

(a) The applicable private pay rate for room and board;

(b) Any charge for non-routine goods or services; and

(c) Any charge for ancillary services.

Section 3. Computation of Room and Board Charges. (1) The monthly charge (personal liability as indicated on the MAP-552) for

a Medicaid qualified resident shall be established by the Kentucky Department of Medicaid services in accordance with 907 KAR 1:006. All items and services considered by the Medicaid program to be non-covered as defined in 907 KAR 1:022, that were provided to Medicaid residents during any period of a covered stay, may be billed to the resident or another payer.

(2) The monthly charge for a private pay veteran shall be established in accordance with Section 2 of this regulation.

(3) If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall not be charged for any room and board, goods, or services.

(4) The monthly charge for a Medicare recipient qualifying for skilled services shall be the applicable co-payments as established by the Centers for Medicare and Medicaid services.

(5) A late fee of six percent per annum may be assessed on any unpaid balances. (1) "Daily cost of care" means the total annual expenditures on nursing home operations divided by the total number of resident care days provided by the three (3) nursing homes during the course of the fiscal year.

(2) "Department" means the Kentucky Department of Veterans' Affairs.

(3) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans' Affairs.

(4) "Resident" means a veteran admitted to a state veterans' nursing home.

Section 2. Maximum Monthly Resident Charge. (1) The maximum charge for room and care services at a state veterans' nursing home shall be \$3,700 per month, which shall include medical and nonmedical services provided by the nursing home.

(2) Medical services obtained from sources other than the nursing home may result in a charge from the source of care to the resident. These medical services may include:

(a) X-ray;

(b) Dental;

(c) Optometry;

(d) Hospitalization;

(e) Ambulance service;

(f) Hearing aids;

(g) Podiatry;

(h) Specialized medications not on the formulary; and

(i) Specialty care and equipment.

(3) The maximum monthly charge shall be revised periodically based on changes that occur which affect the nursing homes' expenditures or sources of income. These changes may include:

(a) Increases in the daily cost of care prompted by inflation in the cost of goods, services, and labor utilized to provide nursing care;

(b) Availability of general funds appropriated to the department by the legislature for operation of the three (3) state veterans' nursing homes; or

(c) Changes in the per diem allocated by the U.S. Department of Veterans' Affairs.

(4) If changes are made to the maximum monthly charge, each affected resident shall be notified in writing at least thirty (30) days prior to the change taking effect. The maximum amount shall not be changed without an amendment to this administrative regulation made in accordance with KRS Chapter 13A.]

BG (R) NORMAN E. ARFLACK, Commissioner

APPROVED BY AGENCY: August 1, 2017

FILED WITH LRC: August 1, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, at 10 a.m., at the Kentucky Department of Veterans Affairs, 1111B Louisville Road, 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. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit

written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. 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: Mark Bowman, Executive Director, Office of Kentucky Veterans Centers, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone 502-564-9203, fax 502-564-9240, email mark.bowman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Bowman

(1) Provide a brief summary of:

(a) What this administrative regulation amendment does: This amendment updates the rate structure for all state veterans nursing facilities such that rates are now pegged to the three types of resident rooms. In the past, there was only one type of room. With the construction of Radcliff Veterans Center, three distinct types of rooms were established: semi-private, private, and a suite based upon the community living standard.

(b) The necessity of this administrative regulation: It is required to encompass the new, three-tiered system of room rates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It conforms directly with the Kentucky statutes that a. establish state veteran nursing homes and b. that authorize the Kentucky Department of Veterans Affairs to operate these homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By updating the rate structure, aligning it with the current mode of operation, this amendment provides for the efficient operation of each home.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the current resident room rate structure.

(b) The necessity of the amendment to this administrative regulation: It is required to encompass the new, three-tiered system of room rates.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms directly with the Kentucky statutes that a. establish state veteran nursing homes and b. that authorize the Kentucky Department of Veterans Affairs to operate these homes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the rate structure, aligning it with the current mode of operation, this amendment provides for the efficient operation of each home.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In answering (3) above, the effect is as follows: Local Government will not be affected by this administrative regulation amendment. State Government entities affected will be the Kentucky Department of Veterans Affairs as the administrative entity charged with planning and operation of the veterans state nursing facilities. The Finance and Administration Cabinet will also be affected through its designation as the Commonwealth's Chief Financial Officer and Controller. The individuals who will be affected are the private pay residents receiving services and care at the four veterans state nursing facilities. It is anticipated that this will be less than 150 individuals per year. This is based upon the historical average of the number of private payors per year. The businesses and organizations that will be affected are those providing non-routine goods and services, and ancillary services to the private pay residents at the four state veterans nursing facilities. Also affected will be insurance providers that will be billed for goods and services as applicable. This number is not determinable as this will depend on the number of service providers that will be utilized and necessary based upon the level of care to provide various types of services to the veteran private pay residents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no additional action that any of the entities identified above will have to take to comply with this administrative regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the state entities in complying with this administrative regulation amendment. There will be no additional cost to the businesses, organizations, and insurance providers in complying with this administrative regulation amendment. There will be an additional cost to private pay residents residing at the veterans state nursing facilities. This cost will vary for non-routine goods and services and ancillary services based upon the need and level of care through the residents' continuum of care and each resident's individual co-pay required by the insurance plan/provider. There will also be an additional cost to the private pay resident for the increase in rates from \$3,700/month to \$4,000/month for a semi-private room, \$4,500/month for a private room, and \$5,000/month for a suite. This cost will vary from an additional \$300/month to \$1,300/month. This increase will depend on the choice the veteran makes in the type of room.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the Kentucky Department of Veterans Affairs will be updating private pay rates that have been outdated when compared to the private nursing home industry. The increased rates will still lag behind that industry, but this is a step in the right direction. It will also increase revenues that will be assigned back to the veterans nursing facilities in order to provide better care to the residents through advancements in equipment, staffing, infrastructure, etc. The benefit to the individual private pay residents at the veterans state nursing facilities will be allowance for additional choices for their resident care such as private rooms, semi-private rooms, etc. It allows for more freedom of choice for the veteran. The benefits to the businesses, organizations, and insurance providers will be contributing to increased services to the private pay veteran residents through increased freedom of choice.

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

(a) Initially: The Kentucky Department of Veterans Affairs does not anticipate any additional cost to initially implement this administrative regulation amendment as various software programs including those for billing, accounts payable, and accounts receivable are current in place and sufficient for implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

(b) On a continuing basis: The Kentucky Department of Veterans Affairs does not anticipate any additional continuing cost to implement this administrative regulation amendment as various software programs including those for billing, accounts payable, and accounts receivable are currently in place and sufficient for implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: It is not anticipated that any additional funding will need to be utilized for the implementation and enforcement of this administrative regulation amendment. Existing agency restricted funds will be utilized for the implementation and enforcement of this administrative regulation amendment as software programs, personnel, etc., are currently in place and sufficient to effectuate this administrative 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:

This administrative regulation amendment will not require an increase in funding provided to the Kentucky Department of Veterans Affairs from the General Assembly. This administrative regulation amendment will increase the room and board rate for private pay residents at the veterans state nursing facilities.

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

Yes, this administrative regulation amendment will increase the private pay room and board rates for the veterans state nursing facilities. There may also be charges assessed for ancillary services and non-routine goods and services provided to private pay veterans residents and/or their insurance providers.

(9) TIERING: Is tiering applied? Yes, tiering is applied because there are three different types of rates for three completely different types of resident rooms.

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 amendment focuses on establishing maximum monthly resident charges for room and board for private pay residents at veterans state nursing facilities. This amendment does not have an impact on local governments. The impact to state government is limited to the Kentucky Department of Veterans Affairs, as an entity charges with oversight of the state veterans nursing facilities. Also affected is the Finance and Administration Cabinet through its overall role as the Commonwealth's Controller and Chief Financial Officer.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.320 authorizes the establishment of state veterans nursing homes and assigns administrative responsibility for their planning operation to the Kentucky Department of Veterans Affairs. KRS 45.325 authorizes the Kentucky Department of Veterans Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.

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 amount of revenue that will be generated for the state the first year as a result of this administrative regulation amendment is difficult to estimate as there are many contributing factors. These factors include the number of private pay residents at the four veterans state nursing facilities, the type of services selected and required for each of those residents based upon the level of care and need, and the type of ancillary services and non-routine goods and services the private pay resident chooses or needs. The Kentucky Department of Veterans Affairs has analyzed historical data and extrapolated an estimate based on those data fields. An estimated total yearly impact on revenue for the first year of this administrative regulation amendment is \$2.4 million resulting from \$1.4 million from the increase and designation of private pay room and board rates and an additional \$1 million cost savings from fees for ancillary services and non-routine goods and services. This administrative regulation amendment will not generate revenue for local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation amendment will not generate revenue for local government. The revenues for the state will most likely remain straight lined in subsequent years as from the first year. Therefore, the subsequent years revenue generated for the state is estimated to be approximately \$2.4 million.

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

for the first year as various software programs including those for billing, accounts payable, and accounts receivable are currently in place and sufficient for the implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for the subsequent years as various software programs including those for billing, accounts payable, and accounts receivable are currently in place and sufficient for the implementation of this administrative regulation amendment. There is also sufficient staff to undertake any additional duties resulting from this administrative regulation amendment.

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

Revenues (+/-): +2.4 million. See 3(a) above.

Expenditures (+/-): 0.

Other Explanation: None

DEPARTMENT OF STATE Registry of Election Finance (Amendment)

32 KAR 1:020. Statement of spending intent and appointment of campaign treasurer~~[Appointment of campaign treasurer and optional request for reporting exemption].~~

RELATES TO KRS 121.160(1), 121.180(1)

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)[,];

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.160(1) requires candidates as part of their filing papers to designate a campaign treasurer. KRS 121.180(1) permits certain candidates to request an exemption from reporting to the Registry when they file for office. This administrative regulation establishes a single form for the appointment of a campaign treasurer and the optional request for exemption from reporting.

Section 1. Appointment of Campaign Treasurer. The Statement of Spending Intent and Appointment of Campaign Treasurer Form ~~["Appointment of Campaign Treasurer and Optional Reporting Exemption Form"]~~ shall be the official form to be used by candidates for the appointment of a campaign treasurer under KRS 121.160(1).

Section 2. Optional Request for Reporting Exemption. (1) The Statement of Spending Intent and Appointment of Campaign Treasurer Form ~~["Appointment of Campaign Treasurer and Optional Reporting Exemption Form"]~~ shall be the official form to be used by candidates seeking an exemption from election finance reporting under KRS 121.180(1)(a) ~~and (b)~~.

(2) The Statement of Spending Intent and Appointment of Campaign Treasurer Form ~~["Appointment of Campaign Treasurer and Optional Reporting Exemption Form"]~~ shall be the official form to be used by candidates seeking to rescind a request for exemption from election finance reporting under KRS 121.180(1)(b) ~~and (c)~~.

Section 3. Incorporation by Reference. (1) The "Statement of Spending Intent and Appointment of Campaign Treasurer Form ~~["Appointment of Campaign Treasurer and Optional Reporting Exemption Form"]~~ reference KREF 001, revised 08/2017[05/2005] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort,

Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: August 11, 2017

FILED WITH LRC: August 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 10:00 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, 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 September 30, 2017. 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: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends an existing form incorporated in 32 KAR 1:020 for the registration of candidates in Kentucky. This administrative regulation amends 32 KAR 1:020 to bring the candidate registration form into compliance with KRS 121.180(1), as amended by 2017 Senate Bill 75, by allowing candidates wishing to spend or raise \$3,000 or less for their campaign to request an official exemption from reporting to the Registry when filing for office. The present form for registration of a candidate will be deleted as obsolete.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. Changes to the existing form for registration of political candidates were necessitated by the passage of 2017 Senate Bill 75, effective June 29, 2017. Changes in the candidate registration form also will provide a candidate with a clear means to register as a candidate and designate a campaign treasurer, as required by KRS 121.160(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of KRS Chapter 121, and KRS 121.160(1), as it prescribes a form for candidate registration and designation of a campaign treasurer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the registration requirements under KRS 121.160 and 121.180 and specifically complies with the provisions of 2017 Senate Bill 75.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the latest version of the candidate registration form to comply with 2017 Senate Bill 75 and includes the option for a candidate to request an exemption from reporting to the Registry when the candidate files for office. This option is recognized under existing law, per KRS 121.180(1), and was previously defined by a lower threshold spending limit. The amendment reflects the higher threshold to trigger reporting requirements of candidate campaigns as the former form is

rendered obsolete by changes due to 2017 Senate Bill 75. The amendment also requires the signature of a candidate's designated campaign treasurer, due to statutory responsibilities and liability created by virtue of the designation under KRS 121.160, 121.180, and 121.990.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2017 Senate Bill 75 requires any candidate, upon registration, to designate an official spending limit. For campaigns intending to raise \$3,000 or less in an election, the candidate may request an exemption from reporting to the Registry. Amendment to the administrative regulation is necessary to bring the Registry's candidate registration form into compliance with 2017 Senate Bill 75.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.180 by prescribing a form for a candidate to request an exemption from reporting to the Registry when filing for office.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the candidate registration form to be filed by candidates into compliance with changes in KRS 121.180 due to the passage of 2017 Senate Bill 75 and will further provide a means for the candidate to clearly designate a campaign treasurer pursuant to KRS 121.160(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates registering to run for public office will be affected by this administrative regulation. As a result of 2017 Senate Bill 75, a candidate may request an exemption from reporting to the Registry, if the candidate intends to raise and/or spend \$3,000 or less, necessitating this form change. The new form also requires the signature of the person whom the candidate wishes to designate as campaign treasurer, due to the statutory responsibilities and potential for liability imposed on a campaign treasurer, per KRS 121.160, 121.180, and 121.990.

(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 will be required of current regulated entities. The Registry will provide the new forms to new registrants. The change necessitated by 2017 Senate Bill 75 requires a candidate to request a reporting exemption in the event the candidate intends to spend \$3,000 or less. The candidate will be required to obtain the signature of the individual designated as campaign treasurer on the registration form, due to the statutory responsibilities and potential for liability imposed on a campaign treasurer by KRS 121.160, 121.180, and 121.990.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes to the candidate registration form will update the process of registration by providing including the new threshold spending limit, as defined by 2017 Senate Bill 75. A candidate will also have means to clearly designate a campaign treasurer, who must also sign to indicate consent to serve as campaign treasurer.

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

(a) Initially: Initial costs to administer the program are estimated to be less than \$10,000.

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget, as well as ordinary programming costs for resulting database changes.

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

implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidate registrants.

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? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015(8), 121.120(1)(g), 121.120(4)(a), 121.160(1), and 121.180(1) (as amended by 2017 Senate Bill 75)

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 as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? Initial costs to administer this program are estimated to be less than \$10,000.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated 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 (+/-): None

Expenditures (+/-): + less than \$10,000 in year 1

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Department of Professional Licensing Kentucky Board of Ophthalmic Dispensers (Amendment)

201 KAR 13:040. Licensing; application, examination; experience; renewal; and inactive status.

RELATES TO: KRS 326.020, 326.035, 326.040, 326.080

STATUTORY AUTHORITY: KRS 326.020(3), 326.035, 326.040, 326.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020(3) authorizes the board to promulgate administrative regulations to carry out the purposes and provisions of KRS Chapter 326. KRS 326.040 establishes the requirements for the issuance of a license including experience and passage of an examination. KRS 326.080 requires the annual renewal of licensure. This administrative regulation prescribes the forms, required examinations, experience, renewal requirements, and

provisions for inactive status required for licensees.

Section 1. Application for License. (1) A person wishing to obtain a license to practice as an ophthalmic dispenser, pursuant to KRS Chapter 326, shall make application to the Kentucky Board of Ophthalmic Dispensers on the form, Application for Ophthalmic Dispenser License.

(2) An applicant for licensure as an apprentice shall complete the form, Application for Apprentice License.

(3) The board shall admit to the practical examination a candidate who pays the required examination fee of seventy-five (75) dollars and who meets the requirements of KRS 326.040, under oath, that he or she qualifies pursuant to KRS 326.040 and 201 KAR Chapter 13.

Section 2. Required Examinations. (1) The examination required pursuant to KRS 326.040(4) shall consist of passage of each of the following:

(a) The American Board of Opticians (ABO) Basic Examination;

(b) The National Contact Lens Examiners (NCLE) Basic Examination; and

(c) The National Commission of State Opticianry Regulatory Boards (NCSORB) National Practical Examination.

(2)(a) For an applicant who holds an apprentice ophthalmic dispenser license issued by the board, the ABO and the NCLE shall be:

1. Taken before the expiration of thirty (30) months from the date of the original receipt of the apprentice license; and

2. Passed within thirty-six (36) months of the date of the original receipt of the apprentice license.

(b) An apprentice ophthalmic dispenser licensed by the board shall not take the NCSORB National Practical Examination until all other licensure requirements have been completed.

(3) For an applicant who is applying for licensure based on credentials and experience, the candidate shall have the following:

(a) An active license as a dispensing optician issued by any state or territory of the United States or the District of Columbia that has standards at least as stringent as those required by KRS 326.040; or

(b) An active certification as a dispensing optician under the ABO and the NCLE, and at least two (2) years of experience as a dispensing optician, as verified under oath by both the applicant and by a sponsor with personal knowledge of the applicant's work history.

1. The verifying sponsor shall be licensed either as an ophthalmologist, an optometrist, or an optician.

2. An applicant for licensure based on credentials and experience under this paragraph shall have passed the NCSORB National Optician's Practical Examination before application.

Section 3. Experience. In addition to the experience requirement established in KRS 326.035, the board shall also count as qualifying experience for an applicant for licensure as an ophthalmic dispenser apprentice any time spent:

(1) Attending a recognized school for ophthalmic dispensing; or

(2) Working in an optical laboratory as an ophthalmic technician.

Section 4. Licensure Renewal. (1) Each license shall be renewed each year on or before December 31.

(2) Each licensee shall complete and submit one (1) of the following:

(a) Application for Renewal for a licensed ophthalmic dispenser; or

(b) Application for Apprentice Renewal for a licensed apprentice ophthalmic dispenser; or

(c) The on-line version of each form maintained by the Department of Professional Licensing.

(3) For a renewal postmarked on or before December 31, or completed and submitted on-line before that date, the renewal fee shall be:

(a) Seventy-five (75) dollars for a licensed ophthalmic

dispenser; or

(b) Fifty (50) dollars for an apprentice ophthalmic dispenser.

(4) In addition to the renewal fee, a thirty-five (35) dollar administrative late fee shall be paid on a renewal postmarked or submitted on the Department of Professional Licensing website after December 31. A license that has not been renewed by close of business on March 1 shall expire. Applicants may request an extension of time to renew of up to sixty (60) days for reasons related to medical issues, military service, or family emergencies. The applicant shall submit the request for an extension of time in writing, and send the request to the board by certified mail on or before the March 1 expiration date.

(5) In order to qualify for reinstatement of a license that has expired by operation of subsection (4) of this section, either an Application for Reinstatement or an Application for Apprentice Reinstatement shall be submitted to the board. In addition, a reinstatement fee shall be submitted with the application. The reinstatement requirements shall be:

(a) \$300 reinstatement fee and twelve (12) additional hours of continuing education to be completed before the end of the current licensure year for reinstatement as an active status or inactive status ophthalmic dispenser; or

(b) Sixty (60) dollars for reinstatement as an apprentice ophthalmic dispenser.

(6) In order to qualify for licensure renewal, a licensee shall comply with the continuing education requirements of KRS 326.020(3)(b) and 201 KAR 13:055.

(7) All revoked and expired licenses shall be reinstated by the licensee to resume the practice of ophthalmic dispensing.

Section 5. Temporary Permit Application. (1) The board shall, if requested by the applicant, issue a temporary permit to a qualified ophthalmic dispenser, who otherwise would qualify for a license but is in the state on a temporary basis or who has not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board.

(2) The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance.

(3) The fee for a temporary permit shall be fifty (50) dollars, which amount shall accompany the application.

Section 6. Board Action, Notification. (1) The board shall act only upon those applications that are complete.

(2) Each applicant shall enclose the prescribed license fee in the form of a check or money order made payable to the Commonwealth of Kentucky State Treasurer.

(3) Each applicant shall be notified of the action of the board; and, if favorable, when and where the examination will be held.

Section 7. Inactive Status. (1) Upon application, the board shall grant inactive status to a qualified licensee. While on inactive status, the licensee shall not engage in the practice of ophthalmic dispensing.

(2) The fee for licensure on inactive status shall be thirty-five (35) dollars per year.

(3)(a) Continuing education requirements shall be waived for a licensee on inactive status during the inactive period.

(b) If the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he or she has completed six (6) hours of continuing education for ophthalmic dispenser licensees and four (4) hours of continuing education for apprentice ophthalmic dispenser licensees within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(c) The licensee may request that he or she be allowed to return to active status immediately, with the provision that the licensee shall receive the appropriate number of continuing education hours within six (6) months of the date on which the licensee returns to active status.

(d) Additionally, the licensee shall be responsible for meeting the requirements established in 201 KAR 13:055 in order to qualify for renewal.

(4) To change from inactive status to active status, the ophthalmic dispenser licensee shall:

(a) Pay a reactivation fee of forty (40) dollars; and

(b) Complete six (6) additional hours of continuing education before the end of the current licensure year.

Section 8 Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Ophthalmic Dispenser License", February 2016;

(b) "Application for Apprentice License", August 2017[February 2016];

(c) "Application for Renewal", February 2016;

(d) "Application for Apprentice Renewal", February 2016;

(e) "Application for Reinstatement", February 2016; and

(f) "Application for Apprentice Reinstatement", February 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Ophthalmic Dispensers, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GRANVILLE SMITH, Board Chair

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 21, 2017, at 2:00 p.m., local time, at the Kentucky Board of Ophthalmic Dispensers, 911 Leawood Drive, 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 in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. 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 September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the requirements to obtain a license as an ophthalmic dispenser. Establishes the examination, continuing education and fee requirements for: licensure; renewal of license; and reinstatement of a license.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as an ophthalmic dispenser. The regulation also establishes the criteria for renewal and reinstatement of a license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the minimum certification and licensure requirements and the application process for licensure. This administrative regulation establishes the fee amounts for licensure, renewal, and reinstatement of the different license classifications.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS 326.020(3)(a) requires the board to promulgate regulations that carry out the provisions of KRS Chapter 326. KRS 326.035(1) requires the board to promulgate regulations to establish qualifications for issuance of an apprentice ophthalmic dispenser license.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, continuing education requirements, and the application process for obtaining a license from the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will adopt and inform applicants of the on-line versions of the licensure and renewal applications. The amendment will require applicants for apprentice ophthalmic dispenser licenses to provide the board with an email address for communications.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to notify applicants that the on-line versions of the application forms are acceptable for license applications. The amendment is necessary to require applicants for apprentice ophthalmic dispenser licenses to provide the board with an email address for board communications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 326.020(3)(a) requires the board to promulgate administrative regulations that carry out the provisions of the chapter relating to licensure of ophthalmic dispensers. KRS 326.035(1) requires the board to promulgate administrative regulations establishing criteria for issuing apprentice ophthalmic dispenser licenses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow applicants for licensure and renewal to submit applications on-line. This amendment will allow the board to communicate with apprentice ophthalmic dispensers in compliance with the Department of Professional Licensing paperless policy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will allow applicants to complete and submit the on-line applications for licensure and renewal within the due dates established by the regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any additional cost to the applicants that comply with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure and apprentice ophthalmic dispensers will be able to save mailing cost by using paperless means of submitting applications, renewals, and communications with the board.

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

(a) Initially: The budget for the board is \$55,200 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the board is \$55,200 annual. It will not cost the administrative body any additional funds to implement this administrative regulation. The amendment to the administrative regulation to allow on-line application will not increase the budget of the board.

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

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

increase the fees assessed to applicants.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees permitted by statute. The statutes in KRS Chapter 326 establish the maximum fee amounts permitted for application and renewal.

(9) Tiering: Is tiering applied? No. Tiering is not needed because the requirements established in this regulation will apply equally to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Kentucky Board of Ophthalmic Dispensers is an administrative body created by KRS 326.020. No other units, parts, or divisions of state or local government will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 326.020, 326.035, and 326.040.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(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 revenue generated will depend on the number of licensees and applicants for the 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 revenue will depend on the number of applicants and licensees for the subsequent years.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Department of Professional Licensing Kentucky Board of Licensure for Ophthalmic Dispensers (Amendment)

201 KAR 13:060. Military Service; reciprocity.

RELATES TO: KRS 326.020, 326.040

STATUTORY AUTHORITY: KRS 326.020(3), 326.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020 grants the board the authority to promulgate administrative regulations to carry out the purpose and provisions of KRS Chapter 326. This administrative regulation provides for necessity of renewal of licenses by members of the military service and to provide reciprocity between the states.

Section 1. Military Service. Any license holder who is in the military service is exempt from renewing his license until he is honorably discharged from the service.

Section 2. Reciprocity. (1) A person may be licensed as an ophthalmic dispenser without complying with the provisions of KRS 326.040 if that person:

(a) Holds a valid license as an ophthalmic dispenser in another

state whose qualifications at the time of licensure were equal to or higher than those requirements established in KRS 326.040 and 201 KAR 13:040; and

(b) Has been actively engaged in the practice of ophthalmic dispensing for a period of two (2) years immediately preceding the date of application.

(2) An applicant for licensure by reciprocity shall:

(a) Apply for licensure on the form required in 201 KAR 13:040, Section 1(1);

(b) Pay the application fee established in KRS 326.040[201 KAR 13:040, Section 4(2)];

(c) Provide a copy of the current license from the other jurisdiction; and

(d) Provide documents proving passage of the National Commission of State Opticianry Regulatory Boards (NCSORB) National Practical Examination; or

(e)[(d)] Take and pass the NCSORB National Practical Examination within twelve (12) months of application for licensure. The board shall not issue a license until provided documents proving the applicant has passed the NCSORB[practical examination established in 201 KAR 13:040, Section 8].

Section 3. Endorsement. (1) A person may be licensed as an ophthalmic dispenser without complying with the provisions of KRS 326.040 if that person:

(a) Hold an active and current certification as a dispensing optician under the American Board of Opticians (ABO) and the National Contact Lens Examiners (NCLE);

(b) Has been actively engaged in practice as a dispensing optician for at least two (2) years under the sponsorship of a licensed ophthalmologist, licensed optometrist, or optician certified by the ABO and NCLE.

(2) An applicant for licensure by endorsement shall:

(a) Apply for licensure on the form required in 201 KAR 13:040, Section 1(1);

(b) Pay the application fee established in KRS 326.040;

(c) Provide documents verifying that the applicant holds active and current certification as a dispensing optician;

(d) Provide documents verifying the applicant has engaged in at least two (2) years of practice as a dispensing optician sponsored by a licensed ophthalmologist, licensed optometrist, or optician certified by the ABO and NCLE; and

(e) Provide documents proving passage of the NCSORB National Practical Examination; or

(f) Take and pass the NCSORB National Practical Examination within twelve (12) months of application for licensure. The board shall not issue a license until provided documents proving the applicant has passed the NCSORB.

GRANVILLE SMITH, Board Chair

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 21, 2017, at 2:00 p.m., local time, at the Kentucky Board of Ophthalmic Dispensers, 911 Leawood Drive, 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 in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. 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 September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Marcus Jones, Board Counsel,

Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the requirements to obtain a license as an ophthalmic dispenser by reciprocity or endorsement.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as an ophthalmic dispenser. The regulation establishes the criteria for the licensure of persons who already hold license or certification in other states or territories of the United States.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the minimum certification and licensure requirement for the licensure of applicants that already hold valid licensure in other states or territories of the United States.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 326 requires the board to verify the qualifications of and establish a procedure for the licensure of persons who wish to practice in the state as apprentice ophthalmic dispensers. KRS 326.020(3)(a) allows the board to promulgate regulations to carry out the purposes and provision of KRS Chapter 326.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs applicants of the education and training expected for licensure by reciprocity and endorsement.

(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 establish a procedure for qualifying applicants who hold licenses or certifications issued by other states or territories of the United States to obtain license in the Commonwealth of Kentucky by endorsement. Licensure by endorsement will allow out of state license holders to obtain Kentucky licensure without having to repeat apprenticeships and national certification examinations.

(b) The necessity of the amendment to this administrative regulation: The amendment establish a procedure to license out of state license holders by endorsement so that those applicants will not have to repeat apprenticeships and national certification examinations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 326.020(a) requires the board to promulgate administrative regulations that carry out the provisions of the chapter. KRS 326.040 allows the board to issue licenses to qualified applicants.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will inform applicants of the criteria for obtaining licensure to practice in the Commonwealth by endorsement and reciprocity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants for licensure by reciprocity and endorsement to show proof of educational and work experience to qualify for an ophthalmic dispenser license.

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

in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will know the criteria for demonstrating qualification for licensure by reciprocity and endorsement.

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

(a) Initially: The budget for the board is \$55,200 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of \$55,200 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. The application fee for licensure in the Commonwealth is established in KRS 326.040.

(9) Tiering: Is tiering applied? No. Tiering is not needed because the requirements established in this regulation will apply equally to all applicants for licensure by reciprocity and endorsement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Ophthalmic Dispensers is an administrative body created by KRS 326.020.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 326.020 and 326.040.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(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 revenue generated will depend on the number of applicants for the 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 revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT Board of Physical Therapy (Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
- (b) Submit certification of completion by the educational administrator of that program;
- (c) Have successfully completed the Jurisprudence Exam;
- (d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
- (e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) Effective May 1, 2018, submit to the board a completed nationwide criminal background check as required by KRS 327.310 with the background check completed no later than six (6) months prior to the date of the filing of the application;

(g) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(h) [(g)] Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (h) [(g)] of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;

(2) Complete a Supervisory Agreement for Applicant with

Temporary Permit with one (1) or more physical therapists; and
(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

- (a) Has practiced in Kentucky for more than one (1) year; and
- (b) Has an unrestricted license.

(2) A supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;

(d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and

(e) Shall notify the board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;

(b) Sign documentation with [the] temporary permit number and designation as defined[required] in 201 KAR 22:053, Section 5(5)(a) or (b); and

(c) Notify the board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or

(b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (f)[(e)] of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

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

(a) "Application for Credentialing", December 2011;

(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and

(c) "Applicant Special Accommodations Request Form", December 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2017, at 4:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. 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 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 September 30, 2017. 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors; Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that any applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of

Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately \$40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, applicants will be granted a credential to work as a physical therapist or physical therapist assistant in the Commonwealth of Kentucky.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals 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? Applicants for physical therapist or physical therapist assistant credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

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

(c) How much will it cost to administer this program for the first

year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Physical Therapy (Amendment)

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

RELATES TO: KRS [42.355,] 164.772, 327.050(8), (9), 327.070[327.075]

STATUTORY AUTHORITY: KRS 327.040(10), (11), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327, and [KRS] 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each odd numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as set forth[established] in KRS 12.355;

(2) Submission of the completed Renewal Application or Reinstatement Application; and

(3) Verification of continued competence as established in 201 KAR 22:045.

Section 2. Credentials not renewed by the board by March 31 of each odd numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:

(a) Meeting the requirements of Section 1(2) of this administrative regulation for the current renewal period;

(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:

1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or

2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant; and

(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135; and]

(d) Effective May 1, 2018, submitting to the board a completed nationwide criminal background check as required by KRS 327.310 with the background check completed no later than six (6) months prior to the date of the filing of the application.

(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination; or

(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application", July 2015; and

(b) "Reinstatement Application", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2017 at 4:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. 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 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 September 30, 2017. 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepler, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors; Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that any applicant

for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310.

(b) The necessity of the amendment to this administrative regulation: To comply with recent statutory changes to KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds a requirement that any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately \$40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria is met, applicants for reinstatement will be granted a credential to work as a physical therapist or physical therapist assistant in the Commonwealth of Kentucky.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals 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? Physical therapists and physical therapist assistants credentialed by the Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No

effect.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)**

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b) ~~and~~;

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL Internet-based test (TOEFL iBT): Writing, twenty-two (22), Speaking, twenty-four (24), Listening, twenty-one (21), Reading, twenty-two (22); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam;

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4) shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months ~~of~~ practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

(3) Effective May 1, 2018, submits to the board a completed nationwide criminal background check as required by KRS 327.310 with the background check completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017~~(February, 2009)~~".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: August 14, 2017.

FILED WITH LRC: August 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2017 at 4:00 p.m. E.T. at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. 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 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 September 30, 2017. 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepper, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors; Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for credentialing foreign-educated applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for foreign-educated applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that any foreign-educated applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Foreign-educated applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately \$40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, foreign-educated applicants will be granted a license to practice physical therapy in the Commonwealth of

Kentucky.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals 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? Foreign-educated applicants for physical therapy credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.060, 327.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT

Board of Licensure for Dietitians and Nutritionists (Amendment)

201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.005, 310.021, 310.031(1), (2)

STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041 requires the Kentucky Board of Licensure for Dietitians and Nutritionists to promulgate administrative regulations and to review and approve or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedure for submitting an application for licensure or certification and establishes requirements for institutions to be approved by the board.

Section 1. Application. (1) An Application for Licensure or Certification shall be submitted to practice dietetics after the requirements established in KRS 310.021 are met.

(2) An Application for Licensure or Certification shall be submitted to practice nutrition after the requirements established in KRS 310.031 are met.

(3) Each Application for Licensure or Certification shall be accompanied by the nonrefundable application fee, established in 201 KAR 33:010.

(4) Each application shall be signed by the applicant.

(5)(a) Each application to practice dietetics shall include:

1. A copy of the applicant's current registration card issued by the Commission of Dietetic Registration; or

2. A letter indicating successful completion of the registration examination.

(b) An Academy of Nutrition and Dietetics membership card shall not constitute compliance with paragraph (a)1. of this subsection.

(6) Each application to practice nutrition shall include a certified copy of the applicant's official master's transcript.

(7) If the applicant is or was licensed or registered in another jurisdiction, the applicant shall submit a complete Verification of Licensure in Other Jurisdictions form for all jurisdictions where the applicant is currently or has formerly been licensed or registered.

Section 2. Approved Programs. (1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

- (a) Communication;
- (b) Counseling;
- (c) Physical and biological sciences;
- (d) Social sciences;
- (e) Research;
- (f) Food composition;
- (g) Nutrient metabolism;
- (h) Food systems management;
- (i) Nutrition therapy;
- (j) Lifecycle nutrition; and
- (k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

- (a) Food sources of nutrients;
- (b) Physiological and chemical processes of digestion, absorption, and metabolism;
- (c) Nutrient needs throughout the life cycle;
- (d) Nutrition assessment processes;
- (e) Pathophysiology of disease states;
- (f) Medical nutrition therapy;
- (g) Nutrient needs in exercise and fitness; and
- (h) Nutrition in health and wellness.

(4) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicum, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

Section 3. Diet Ordering and Scope of Practice Guidelines. Hospitals, Long Term Care and other Healthcare Facilities. All patient diets, including therapeutic diets, shall be ordered by a practitioner responsible for the care of the patient, or by a licensed dietitian as authorized to do so by the hospital, long term care or other healthcare facilities and in accordance with KRS 310.005 and KRS 310.021. Diets shall be based on an assessment of the

patient's nutritional status and therapeutic needs. Therapeutic diet shall be defined as a diet ordered as part of treatment for a disease or clinical condition, or to eliminate or decrease specific nutrients in the diet, or to increase specific nutrients in the diet, or to provide food based on patient tolerance.

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

- (a) "Application for Licensure or Certification", July 2015; and
- (b) "Verification of Licensure in Other Jurisdictions", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORA ARNOLD PARKS, Chair

APPROVED BY AGENCY: July 31, 2017

FILED WITH LRC: August 7, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2017, at 1:30 p.m., at the office of the Kentucky Board of Licensure for Dietitians and Nutritionists, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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. Written comments shall be accepted until the end of the day on September 30, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Nicole Sergent, Counsel for Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, C/O Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5463, Nicole.Sergent@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Kelly Walls, Kelly.walls@ky.gov, phone (502) 782-8814; and Nicole Sergent

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes procedures for submitting an application for licensure or certification, establishes the requirements for institutions to be approved by the board, and clarifies scope of practice, including diet order writing.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedures for the submitting of an application for licensure or certification, establishes the requirements for institutions to be approved by the board and clarifies scope of practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require procedures for submitting an application for licensure or certification, require procedures for institutions to be approved by the board, and define the scope of practice.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will advise prospective credential holders of the application process, requirements to be licensed or certified by the board, and clarify the scope of practice for licensed dietitians and certified nutritionists.

(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 incorporates new guidelines further defining scope of practice to allow diet order writing privileges at

hospitals and long term care facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarification to licensees, hospitals and long term care facilities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 310.005 defines the general scope of practice for licensed dietitians pursuant to criteria set forth in KRS 310.021. KRS 310.041(1) authorizes the board to promulgate regulations implementing KRS 310.005 to provide scope of practice guidelines.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies scope of practice definitions for licensees, hospitals and long term care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,289 Licensed Dietitians and 45 Dual Licensed/Certificate holders.

(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: Licensure applicants will have clarification regarding diet order writing and scope of practice.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change will allow more timely, cost effective and evidence based nutrition services.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is housed for administrative purposes within the Public Protection Cabinet Office of Occupations and Professions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.041(1), (2) and (6).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

(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? Additional

revenue is not anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Licensed Diabetes Educators (Amendment)

201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(a)

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331(1)

requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.334(2)(a) requires the board to promulgate administrative regulations to establish the duties of the apprentice diabetes educator supervisor. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1)(a) The supervisor shall review the apprentice diabetes educator's provision of diabetes self-management education.

(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly, one (1) hour of which shall be while being physically present in the same room.

(c)1. Prior to the apprentice applying for licensure, the supervisor shall observe the apprentice providing diabetes education to a patient while the supervisor is physically present in the same room on at least two (2) separate occasions, for a combined total of at least four (4) hours, two (2) hours of which shall have occurred within the last twelve (12) months preceding licensure application.

2. The apprentice shall be responsible for obtaining any permissions, releases, or waivers required by law in order for the supervisor to observe the apprentice providing diabetes education to a patient.

(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the Application for Licensure, Form DE-01.

(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.

(4) The supervision process shall focus on:

(a) Identifying strengths, developmental needs, and providing direct feedback to foster the professional development of the apprentice diabetes educator;

(b) Identifying and providing resources to facilitate learning and professional growth;

(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and

(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation Requirements. The documentation

required by the Supervised Work Experience Report, Form DE-05 shall be maintained for a period of five (5) years and provided to the board at the request of the board.

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

(a) "Application for Licensure", Form DE-01, 09/2017[April 2017]; and

(b) "Supervised Work Experience Report", Form DE-05, 09/2016.

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

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 9:30 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, 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 cancelled. This hearing is open to the public. Any person who wished 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 September 30, 2017. 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish administrative regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the definitions of work experience and supervision for apprentice diabetes educators.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the supervisor affidavit on the form to specify that the supervisor must be a licensed or master licensed diabetes educator, and to require the supervisor to provide a license number.

(b) The necessity of the amendment to this administrative regulation: There was some unclarity on the form about who qualifies as a supervisor.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the form to indicate that a licensed or master licensed diabetes educator must serve as a supervisor.

(d) How the amendment will assist in the effective and

administration of the statutes: The amendment clarifies the requirements for supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 500 individuals are licensed or master licensed diabetes educators, and there are currently several apprentice diabetes educators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: The supervisors and apprentice diabetes educators will have to complete the supervision requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to apply for licensure and receive supervision.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators
(Amendment)**

201 KAR 45:120. Renewal, reinstatement, and inactive status.

RELATES TO: KRS 309.331, 309.334, 309.335

STATUTORY AUTHORITY: KRS 309.331(1), 309.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations establishing procedures for annual renewal of licenses, and KRS 309.335(2)(c) requires the board to promulgate administrative regulations for reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit to the board by November 1 of each year:

(a) A completed Renewal Application, Form DE-02;

(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

(c) The renewal fee as established in 201 KAR 45:100.

(2) If a license is not renewed by December 31 of the new licensure year, the license shall automatically expire.

Section 2. Reinstatement. (1) An expired license or permit shall be reinstated upon the licensee or permit holder:

(a) Submitting a completed Reinstatement Application, Form DE-08;

(b) Paying the required fees established in 201 KAR 45:100; and

(c) Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year since the last date the license was active.

(2) An expired license or permit may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee or permit holder may place his or her license or permit in inactive status. To request that a license or permit be placed in inactive status, the licensee or permit holder shall submit written notice to the board prior to November 1.

(2)(a) An individual with an inactive license or permit shall not practice diabetes education while the license or permit is inactive.

(b) A licensee or permit holder may remain in inactive status for a maximum of five (5) years.

(3)(a) During the period of inactive status, the licensee or permit holder shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130.

(b) Upon the licensee's or permit holder's request for licensure reactivation, the licensee or permit holder shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year the license was inactive, and payment of the fee as established in 201 KAR 45:100.

(4)(a) An individual shall submit in writing a request to the board to be placed back in active status.

(b) The request shall be submitted at least one (1) week in advance of the board's regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit to the board by November 1 of each year:

(a) A completed Apprentice Renewal Application, Form DE-04;

(b) Proof of the required continuing education established in 201 KAR 45:130; and

(c) The renewal fee established in 201 KAR 45:100.

(2)(a) If a permit is not renewed by December 31, it shall automatically expire.

(b) A permit may be reinstated. Reinstatement shall comply with the requirements of section 2 of this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application", Form DE-02, 09/2017[02/2015];

(b) "Apprentice Renewal Application", Form DE-04, 09/2017[06/2015]; and

(c) "Reinstatement Application," Form DE-08, 03/2017.

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

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 9:30 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, 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 cancelled. This hearing is open to the public. Any person who wished 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 September 30, 2017. 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish administrative regulations for the licensing of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the schedule on the forms to be consistent with 201 KAR 45:100 and to add the supervisor's license number to the supervision log on form DE-04.

(b) The necessity of the amendment to this administrative regulation: The amendment changes the schedule on the forms to be consistent with 201 KAR 45:100 and to add the supervisor's license number to the supervision log on form DE-04.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331(2) authorizes the board to issue renewals.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment changes the schedule on the forms to be consistent with 201 KAR 45:100 and to

add the supervisor's license number to the supervision log on form DE-04.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 500 individuals are licensed or master licensed diabetes educators, and there are currently several apprentice diabetes educators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: Applicants will have to complete the renewal form in order to renew.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for renewal set in 201 KAR 45:100 is \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): License and permit holders will be able to renew their permits.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The amendment requires payment of a fee for reactivation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.335

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Licensed Diabetes Educators (Amendment)

201 KAR 45:170. Application procedures.

RELATES TO: KRS 309.331, 309.334, 309.335, 309.336

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(c), 309.335(1)(b)1., 309.336(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.335(1)(b)1. requires an applicant for licensure as a licensed diabetes educator to file an application as provided by the board, to show successful completion of a course or program as determined by the board, and to demonstrate experience in the care of people with diabetes under supervision that meets requirements specified in administrative regulations promulgated by the board. KRS 309.334(2)(c) requires the board to establish additional requirements to apply for an apprentice diabetes educator permit, and KRS 309.336(2)(b) requires the board to establish additional requirements to apply for licensure as a master licensed diabetes educator. This administrative regulation establishes application procedures for licensed diabetes educators, master licensed diabetes educators, and apprentice diabetes educators.

Section 1. Licensed Diabetes Educator Application Procedures. (1) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)1. shall submit to the board:

(a) A completed Application for Licensure, Form DE-01, incorporated by reference in 201 KAR 45:110, including documentation verifying completion of 750 hours of work experience as an apprentice diabetes educator under a supervisor as provided in 201 KAR 45:110; and

(b) Payment of the licensure fee as established in 201 KAR 45:100.

(2) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)2. shall submit to the board:

(a) Evidence showing [the] successful completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators; and

(b) Payment of the licensure fee as established in 201 KAR 45:100.

(3) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)3. shall submit to the board:

(a) Evidence showing the successful completion of an equivalent credentialing program; and

(b) Payment of the licensure fee as established in 201 KAR 45:100.

Section 2. Master Licensed Diabetes Educator Application Procedures. An applicant for licensure as a master licensed diabetes educator shall submit to the board:

(1) A completed Application for Licensure, Form DE-01;

(2) Proof of completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators in Board Certified Advanced Diabetes Management or as a Certified Diabetes Educator; and

(3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 3. Apprentice Diabetes Educator Application Procedures. An applicant for an apprentice diabetes educator permit shall submit to the board:

(1) A completed Application for Apprentice Diabetes Educator Permit, Form DE-03;

(2) Payment of the licensure fee as established in 201 KAR 45:100; and

(3) Proof of an active license or certification in good standing

as at least one (1) of the following:

(a) American College of Sports Medicine Certified Clinical Exercise Specialist or Registered Clinical Exercise Physiologist;

(b)1. Certified social worker or licensed clinical social worker pursuant to KRS Chapter 335; and

2. The applicant shall also have at least two (2) years of experience in a health profession;

(c) Dietitian pursuant to KRS Chapter 310;

(d) Health educator holding active certification as a master certified health education specialist with the National Commission on Health Education Credentialing;

(e) Nutritionist pursuant to KRS Chapter 310;

(f) Occupational therapist pursuant to KRS Chapter 319A;

(g) Optometrist pursuant to KRS Chapter 320;

(h) Osteopath pursuant to KRS Chapter 311;

(i) Pharmacist pursuant to KRS Chapter 315;

(j) Physical therapist pursuant to KRS Chapter 327;

(k) Physician pursuant to KRS Chapter 311;

(l) Physician assistant pursuant to KRS Chapter 311;

(m) Podiatrist pursuant to KRS Chapter 311;

(n) Psychologist pursuant to KRS Chapter 319;

(o) Registered nurse pursuant to KRS Chapter 314; or

(p) A license or certification from a state or the District of Columbia equivalent to one (1) of the licenses or certifications listed in this subsection.

(4) The board shall not consider an applicant for an apprentice diabetes educator permit who does not hold an active license or certification as listed in subsection (3) of this section.

(5) An applicant for an apprentice diabetes educator permit shall include the Supervised Work Experience Report, Form DE-05, incorporated by reference in 201 KAR 45:110.

Section 4. Applications involving prior convictions of a crime.

(1) If the board considers denying an application based solely on an applicant's prior conviction of a crime, the board shall:

(a) Provide the applicant with written notice that the board has determined that the prior conviction may disqualify the applicant for a license or permit, and demonstrates the connection between the prior conviction and the license or permit being sought; and

(b) Afford the applicant an opportunity to be personally heard before the board prior to the board making a decision on whether to disqualify the applicant.

(2) If the board resolves to deny an application based solely on an applicant's prior conviction of a crime after complying with the procedures in Section 4(1) of this administrative regulation, the board shall notify the applicant in writing of:

(a) The grounds and reasons for the denial or disqualification;

(b) That the applicant has a right to a hearing conducted in accordance with KRS Chapter 13B, if a written request for a hearing is made within ten (10) days after service of notice;

(c) The earliest date the applicant may reapply for a license or permit; and

(d) That evidence of rehabilitation may be considered upon reapplication.

Section 5[4]. Incorporation by Reference. (1) "Application for Apprentice Diabetes Educator Permit", Form DE-03, 08/2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 9:30 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leewood Drive, 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 cancelled. This hearing is open to the public. Any person who wished 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 September 30, 2017. 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements to apply for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the requirements to apply for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective

administration of the statutes: This administrative regulation will establish the requirements to apply for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment amends the regulation to comply with the requirements of KRS 335B.030 regarding prior convictions of a crime.

(b) The necessity of the amendment to this administrative regulation: This amendment amends the regulation to comply with the requirements of KRS 335B.030 regarding prior convictions of a crime.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331 authorizes the Kentucky Board of Licensed Diabetes Educators to promulgate administrative regulations in accordance with KRS Chapter 13A to carry out and enforce KRS 309.325 to 309.339.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment amends the regulation to comply with the requirements of KRS 335B.030 regarding prior convictions of a crime.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 500 individuals are licensed or master licensed diabetes educators, and there are currently several apprentice diabetes educators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: Applicants will be entitled to utilize the protections afforded by the procedures in KRS 335B.030.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be entitled to utilize the protections afforded by the procedures in KRS 335B.030.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334, 309.335, 309.336

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

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

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) [~~KRS 195.025(4)~~] 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, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements [~~procedures~~] for the taking of live bait for personal use.

Section 1. Definitions. (1) "Different body of water" means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam, but does not include a river, stream, or

creek that is separated by a low-level dam.

(2) "Live bait" means live bait fishes, crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams (Genus Corbicula), and other aquatic invertebrate organisms except mussels.

(3) "Live bait fishes" means:

(a) Rough fishes, except blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter; or

(b) Redear sunfish less than six (6) inches in length.

(4) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170.

Section 2. Equipment. (1) Any other organisms not defined as live bait pursuant to Section 1 of this administrative regulation shall be returned immediately to the water.

(2) Live bait for personal use shall only be taken as established in paragraphs (a) through (d) of this subsection.

(a) The maximum size seine for:

1. Take in the Ohio and Mississippi Rivers and Barkley and Kentucky Lakes shall be:

a. Thirty (30) feet long;

b. Six (6) feet deep; and

c. With bar mesh no larger than one-fourth (1/4) of an inch; or

2. All other waters of the Commonwealth shall be:

a. Ten (10) feet long;

b. Four (4) feet deep; and

c. With bar mesh no larger than one-fourth (1/4) of an inch.

(b) The maximum size for a minnow trap shall be:

1. Three (3) feet long;

2. Eighteen (18) inches in diameter; and

3. With openings no larger than one (1) inch.

(c) The maximum size for a dip net shall be three (3) feet in diameter[, and shall only be allowed in the following waters:

1. Ohio River;

2. Tennessee River;

3. Mississippi River;

4. Cumberland River below Barkley Dam;

5. Kentucky River below Lock Number Fourteen (14); and

6. All lakes over 1,000 acres].

(d) The maximum size for a [sport] cast net [on a statewide basis] shall be twenty (20) feet in diameter with one (1) inch bar mesh, except take shall be prohibited in the following bodies of water:

1. Lakes with a surface area of less than 500 acres; and

2. Hatchery Creek in Russell County, a tributary to the Cumberland River located below Wolf Creek Dam.

Section 3. Bait. (1) A mussel, except for an Asiatic clam, shall not be taken or used as bait.

(2) A sport fisherman shall not possess bait in an amount greater than the following:

(a) 500 live bait fishes;

(b) 500 crayfish;

(c) Twenty-five (25) dusky salamanders of the genus Desmognathus;

(d) Five (5) frogs, except bullfrogs;

(e) Five (5) tadpoles;

(f) 100 native lampreys; or

(g) 500 aquatic invertebrates other than mussels, excluding Asiatic clams.

Section 4. Possession and Movement of Live Bait for Personal Use. (1) A person possessing live wild-caught shad or herring shall:

(a) Only use live wild-caught shad or herring in the water body from which they were collected; and

(b) Not transport live wild-caught shad or herring from the body in which they were collected to:

1. A different body of water; or

2. The same body of water if it involves transporting the shad or herring via a Kentucky roadway.

(2) A person may possess or transport live shad or herring if

the person legally purchased the shad or herring from a licensed bait dealer and possesses a valid receipt of the purchase that includes the:

- (a) Species of fish;
- (b) Quantity of fish;
- (c) Amount of the transaction; and
- (d) Date of purchase.

(3) Prohibited aquatic species, as established in 301 KAR 1:122, shall not be possessed or used as live bait.

GREGORY K. JOHNSON, Commissioner

REGINA STIVERS, Deputy Secretary

For DON PARKINSON, Secretary

APPROVED BY AGENCY: August 1, 2017

FILED WITH LRC: August 14, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2017 at 10:00 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the taking of live bait for personal use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by regulating the amount of live bait, the size or types of devices used for taking live bait, and the places where the taking of live bait is permitted.

(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 make the use of dip nets for collection of live bait legal statewide.

(b) The necessity of the amendment to this administrative regulation: The use of dip nets to collect live bait will not have any biological impacts in those areas protected under current regulation. This amendment will make it easier for anglers to collect live bait for personal use.

(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: All individuals who collect live bait for personal use could be affected by this amendment. Currently, the number of people who collect live bait for personal use in Kentucky is unknown.

(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: Anglers will now be able to use dip nets statewide for the collection of live bait for personal use.

(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 entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will now be easier for anglers to collect live bait across the state.

(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? No. Tiering is not applied to this regulation because all people who collect live bait for personal use must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' 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) 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, 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? 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:

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

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, [150.175,] 150.445, 150.450(2), (3), 150.990, 217.015(20)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. Part 17 protects the shovelnose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

Section 1. Definitions. (1) "Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.

(2) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3) "Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.

(4) "Immediate family member" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(5) "Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisherman to participate in a special catfish harvest program downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing.

(6) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(7) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(8) "Roe-bearing Fish Buyer's Permit" means a permit issued by the ~~department~~[Department of Fish and Wildlife Resources] that entitles the permittee to buy roe-bearing species or roe in accordance with this administrative regulation.

(9) "Roe-bearing Fish Harvester's Permit" means a permit issued by the ~~department~~[Department of Fish and Wildlife Resources] to a licensed commercial fisherman that entitles the permit holder to harvest and sell roe-bearing species in accordance with this administrative regulation.

(10) "Sport fish" means those species established in[~~so designated by~~] 301 KAR 1:060.

(11) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of forty (40) inches in length; or

(b) Channel catfish that is a minimum of thirty (30) inches in length.

(12) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(13) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food[-]processing plant prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Nonresident Commercial Fishing Licenses. A nonresident commercial fishing license shall only be issued to residents of states that offer nonresident fishing licenses to Kentucky residents, except that a nonresident with a valid 2013 Kentucky nonresident commercial fishing license shall be eligible to purchase a nonresident fishing license in subsequent license years, unless the nonresident fails to purchase the permit during any license year.

Section 3. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear; and

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A commercial fisherman whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisherman; or

(b) Assist a licensed Kentucky commercial fisherman in harvesting or transporting fish.

Section 4. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear pursuant to 301 KAR 1:146;

(2) Not use commercial fishing gear within:

(a)1. Fifty (50) yards of the outlet or inlet of an overflow lake; or

2. Fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River; and

(b) 200 yards of a dam, as established in KRS 150.445;

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes; and

(4) Call the department at 800-858-1549 within twenty-four (24) hours if any commercial gear is:

(a) Lost;

(b) Stolen; or

(c) Irrecoverable due to unforeseen circumstances.

Section 5. Special Catfish Harvest Restrictions. (1) In the Ohio River and its tributaries open to commercial fishing, there shall be:

(a) An unlimited harvest of:

1. Blue and flathead catfish that are less than thirty-five (35) inches in length; and

2. Channel catfish that are less than twenty-eight (28) inches in length; and

(b) A daily limit of one (1):

1. Blue and flathead catfish greater than or equal to thirty-five (35) inches in length; and

2. Channel catfish greater than or equal to twenty-eight (28) inches in length.

(2) A person with a valid commercial license shall obtain from the department a free Ohio River Trophy Catfish Harvest Permit in order to harvest multiple trophy catfish downstream of Cannelton Lock and Dam.

(a) The department shall issue a maximum of fifty (50) permits annually.

(b) Beginning in 2015, the department shall issue a permit to a commercial fisherman who:

1. Has reported a minimum harvest of 10,000 pounds of catfish from the Ohio River and its tributaries open to commercial fishing in at least two (2) of the last three (3) years; and

2. Sends a written request to the department postmarked on or before March 10.

(c)[In 2014, the department shall issue a permit to a

commercial fisherman who:

1. Has reported a minimum harvest of 10,000 pounds of catfish from the Ohio River or its tributaries open to commercial fishing in at least two (2) of the last three (3) years; and

2. Sends a written request to the department postmarked on or before ten (10) days following the 2014 amendment effective date of this administrative regulation.

(d)] There shall be an unlimited daily harvest of catfish less than trophy size for each permit holder.

(d)](e)] There shall be a daily harvest limit of four (4) trophy catfish in aggregate for each permit holder.

(e)](f)] Beginning in 2015, if fifty (50) permits are not issued by March 15, then the department shall conduct a random electronic lottery drawing for the remaining slots.

(f)](g)] A commercial fisherman shall apply for the lottery established in paragraph (e)](f)] of this subsection by sending a written request to the department to be entered in the lottery postmarked on or before March 10.

(g)](h)] In 2014, if fifty (50) permits are not issued within fifteen (15) days following the 2014 amendment effective date of this administrative regulation, then the department shall conduct a random electronic lottery drawing for the remaining slots.

(i)] A commercial fisherman shall apply for the lottery established in paragraph (h)] of this subsection by sending a written request to the department to be entered in the lottery postmarked on or before ten (10) days following the 2014 amendment effective date of this administrative regulation.

(j)] If the number of applicants for any lottery is less than the number of available permits, then the remaining permits shall be distributed on a first-come, first-served[first-serve] basis.

Section 6. Harvester Permit. (1) In order to retain his or her permit privilege, a harvester permit holder shall submit to the department postmarked[the following] by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 3:022.

(2)[A mailed Application for Commercial Roe-bearing Fish Harvester's Permit and fee shall be postmarked on or before September 15.

(3)] Prior to being issued a harvester permit, a person shall possess a valid commercial fishing license.

(3)](4)] A harvester permit shall not be sold to a resident of a state that will not sell a nonresident harvester permit, or its equivalent, to Kentucky residents.

(4)](5)] The maximum number of resident harvester permits available each year shall be 101.

(5)](6)] The maximum number of nonresident harvester permits available each year shall be eighteen (18).

(6)](7)] A harvester permit holder shall be eligible to transfer permit privileges to:

(a) An immediate family member; or

(b) An unlicensed helper who:

1. Has been employed by the permit holder for a period of at least one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(7)](8)] To transfer a permit, the permit holder shall send to the department:

(a) A notarized letter documenting the name and relationship of the permit recipient; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(8)](9)] Transferability shall be voided if a commercial fishing license or harvester permit is revoked or suspended as established in Section 14 of this administrative regulation.

Section 7. Harvester Permit Lottery. (1) There shall be a lottery for the unfilled harvester permits below the quota.

(2) A person shall apply for the lottery by submitting the following to the department by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The appropriate permit fee as established in 301 KAR 3:022.

(3) A mailed Application for Commercial Roe-bearing Fish Harvester's Permit shall be postmarked by September 15 to be eligible.

(4) A person chosen in the lottery shall first obtain a commercial fishing license prior to obtaining a harvester permit.

(5) The department shall return all permit fees to those not chosen in the lottery.

(6) If the department receives fewer resident or nonresident Applications for Commercial Roe-bearing Fish Harvester's Permits than the number of available harvester permits, then completed Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 shall be issued[filled] in the order they were received until the quota has been reached.

(7) If the number of Applications for Commercial Roe-bearing Fish Harvester's Permits received [on a day] after September 15 exceeds the number of harvester permits available, then a second lottery shall be held to determine the recipients of the available permits.

Section 8. Harvester Permit Requirements. (1) A harvester permit shall be required for a licensed commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(2) A permit shall not be required for a special commercial fishing permit holder to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3) A harvester permit shall not be issued unless all applicable reports have been completed and submitted to the department, pursuant to Section 14 of this administrative regulation.

(4) A harvester permit holder shall:

(a) Have the permit in possession while:

1. Fishing for roe-bearing fish; and

2. Transporting or selling roe-bearing fish or unprocessed roe;

(b) Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 9 of this administrative regulation; and

(c) Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer.

Section 9. Buyer's Permit Requirements. (1) A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as established in 301 KAR 3:022.

(3) A buyer's permit holder shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing[roe] fish harvesters in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing[roe] fish harvesters in another state including:

1. Name, address, and telephone number of the seller;

2. License number of the seller; and

3. Number of pounds of unprocessed roe purchased;

(e) Sign the harvester permit holder's Daily Roe-bearing Fish Harvester's Transaction Report for each transaction prior to purchasing or receiving unprocessed roe from the harvester;

(f) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permit holder for a period of three (3) years; and

(g) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section 10. Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year-round in the waters listed in 301 KAR 1:150, except for:

(a) Kentucky and Barkley lakes as established in 301 KAR 1:140;

(b) The shovelnose sturgeon season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and

(c) The paddlefish season, which shall extend from:

1. November 1 through April 30 in all waters open to commercial fishing, except Barkley and Kentucky Lakes, as established in 301 KAR 1:140; and

2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing, except the Ohio and Mississippi Rivers.

(2) There shall not be a size limit on any commercially-harvested rough fish, except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of the snout to the fork of the tail fin; [and]

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except in [for] Kentucky and Barkley lakes as established in 301 KAR 1:140; and

(c) Blue catfish, flathead catfish, and channel catfish as established in Section 5 of this administrative regulation, and measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(3) A harvester or buyer permit holder shall not possess:

(a) Unprocessed paddlefish [Paddlefish] roe after June 5; or

(b) Unprocessed shovelnose [Shovelnose] sturgeon roe after May 20; or

~~(c) Blue catfish, flathead catfish, and channel catfish as established in Section 5 of this administrative regulation, and measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.~~

Section 11. Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not harvest, and shall immediately release the following species:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon, a federally endangered species;

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River; [and]

(e) All turtle species;

(f) All mussel species except Asiatic clams (Genus Corbicula);
and

(g) Alligator gar.

(2) A licensed commercial fisherman shall only sell roe-bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods established in and permitted by 301 KAR 1:146.

Section 12. Tending Gear and Removing Fish. A commercial fisherman shall:

(1) Tend and remove the fish from:

(a) Hoop nets or slat traps at least once every seventy-two (72) hours; and

(b) Other commercial fishing gear at least once every twenty-four (24) hours;

(2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

(3) Remove commercial fishing gear from the water when finished fishing.

Section 13. Roe Fish Egg Checking Methodology. A commercial fisherman shall use a ten (10) gauge or smaller needle to examine roe fish for the presence of eggs.

Section 14. Reporting, License and Permit Suspension, Renewal, and Revocation. (1) Every licensed commercial fisherman shall submit a completed Monthly Report of Commercial Fish Harvest in Kentucky by the tenth day of every month for the

previous month's harvest, even if no harvest occurred.

(2) A harvester permit holder shall:

(a) Complete a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are harvested or sold to a Kentucky permitted buyer; and

(b) Submit to the department all completed daily reports within a calendar month by the tenth day of the following month, in addition to the reporting requirements established in subsection (1) of this section.

(3) If a buyer's permit holder completes any transactions in a given month, the permit holder shall submit to the department a completed Monthly Commercial Roe-bearing Fish Buyer's Report by the tenth day of the following month.

(4) A report that is being mailed to the department shall be postmarked on or before the tenth of the month pursuant to subsections (1) through (3) of this section.

(5) The department shall issue a courtesy reminder letter to a holder of a commercial fishing license, harvester permit, or buyer's permit who has failed to submit to the department a monthly report by the deadlines established in subsections (1) through (4) of this section.

(6) The department shall issue a warning letter to a license or permit holder who has twice failed to meet the reporting deadlines established in subsections (1) through (4) of this section during any given commercial fishing license year.

(7) The department shall suspend the commercial fishing license of a license or permit holder who has failed to meet reporting deadlines for three (3) or more months in a given license year until the license or permit holder submits to the department all required reports.

(8) The department shall suspend for a period of three (3) months the commercial fishing license of a license holder who has not met the reporting deadlines established in this section for four (4) or more times in a license year.

(9) If a three (3) month suspension extends into a new license year, subsequent delinquent reports shall result in additional three (3) month suspensions.

(10) The department shall not renew a commercial fishing license, harvester permit, or buyer's permit for a person who has not satisfied the reporting requirements of this administrative regulation.

(11) The department shall revoke the commercial fishing license, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear, pursuant to 301 KAR 1:146;

(b) Knowingly placing commercial fishing gear in a restricted area, pursuant to Section 4(2) and (3) of this administrative regulation;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing, pursuant to 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(12) The department shall revoke a buyer's permit, for a period of two (2) years, of a person:

(a) Convicted of a federal commercial fishing violation; or

(b) Who falsified data on a Monthly Commercial Roe-bearing Fish Buyer's Report.

(13) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit has been:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked.

Section 15. Boundaries. The department shall make available on its Web site at fw.ky.gov the Global Positioning System coordinates detailing the Kentucky and Ohio border on the Ohio River, for download to personal devices.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008;
- (b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008;
- (c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008;
- (d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008;
- (e) "Monthly Report of Commercial Fish Harvest in Kentucky", 2014; and
- (f) "List of GPS coordinates for Ohio River Boundary with Ohio", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner

REGINA STIVERS, Deputy Secretary

For DON PARKINSON, Secretary

APPROVED BY AGENCY: August 1, 2017

FILED WITH LRC: August 14, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2017 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage rough fish populations in Kentucky.

(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 seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of the statutes and federal regulation by defining the requirements for commercial fishing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will prohibit commercial fishing for alligator gar and all species of mussels except the Asiatic clam (Genus Corbicula). In addition, cleanups to the regulation will remove outdated catfish harvest permitting and lottery information, move a misplaced subsection pertaining to catfish size restrictions, and correct catfish size limits which left out the wording "or equal to".

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to eliminate the potential commercial harvest of alligator gar. Alligator gar are being stocked to re-establish a self-sustaining population in Kentucky. Commercial mussel harvest is also being eliminated, except for the invasive Asiatic clam, due to elimination of mussel harvesting in Kentucky. The regulation cleanups are needed to fix outdated information and minor errors in wording and text location.

(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: This amendment will prohibit 246 commercial fishermen from harvesting alligator gar. The elimination of commercial mussel harvest will have no impact since there are currently no commercial mussel harvesters 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: A commercial fisherman who catches an alligator gar must release the fish immediately.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to commercial fishermen should be negligible. Typically, very few gar are harvested by commercial fishermen.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen who intend to harvest gar will benefit in future years once a self-sustaining population of alligator gar develops and harvest restrictions are reduced or eliminated.

(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? No. Tiering is not applied to this regulation because all commercial fishermen must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' 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 authorizes the department to set seasons, establish bag or creel limits, and to regulate the buying, selling, or transporting of fish and wildlife. KRS 150.175(3) authorizes the establishment of a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

(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:

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

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

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods[including underwater spearing, scuba diving, sport fishing trotlines, jugging, setlines, gigging, snagging, grabbing, bow fishing, and the taking of rough fish from backwaters].

Section 1. Definitions. (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(6) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(7) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(8) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(9) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove pursuant to subsection (4) of this section shall display an international diving flag pursuant to 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) A participant who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place;

2. Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and

3. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license[name and address] of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

- (4) An angler shall not use more than:
 - (a) Two (2) sport fishing trotlines;
 - (b) Twenty-five (25) setlines; or
 - (c) Fifty (50) jug lines.
- (5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.
- (6) A person using a sport fishing trotline shall:
 - (a) Set the trotline at least three (3) feet below the water's surface;
 - (b) Not have more than fifty (50) single or multi-barbed hooks; and
 - (c) Have all hooks at least eighteen (18) inches apart on the trotline.
- (7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.
- (8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:
 - (a) In the Tennessee River within 700 yards of Kentucky Dam;
 - (b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;
 - (c) In any lake less than 500 surface acres owned or managed by the department, except:
 - 1. Ballard Wildlife Management Area lakes, Ballard County;
 - 2. Peal Wildlife Management Area lakes, Ballard County; and
 - 3. Swan Lake Wildlife Management Area lakes, Ballard County; or
 - (d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:
 - 1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;
 - 3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 5. McAlpine Dam downstream to the K & I railroad bridge;
 - 6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or
 - 8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.
- ~~(9)(a) The Taylorsville Lake blue and channel catfish limits shall be an aggregate daily creel limit of fifteen (15).~~
- ~~(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.~~
- ~~(40)~~ An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits pursuant to 301 KAR 1:201.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

- (a) Poison;
 - (b) Electrical devices;
 - (c) Firearms; or
 - (d) Explosives.
- (2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.
- (3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.
- (4) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.
- (5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Giggling and Snagging. (1) Giggling and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

- (2) A person shall not:
 - (a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as established in subsections (7) and (9) of this section;
 - (b) Gig or snag from a platform;
 - (c) Gig from a boat in a lake with a surface area of less than 500 acres;
 - (d) Gig at night from a boat; or
 - (e) Snag from a boat.
- (3) A snagging rod shall be equipped with:
 - (a) Line;
 - (b) Guides;
 - (c) A reel; and
 - (d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:
 - 1. The Green River and its tributaries; or
 - 2. The Rolling Fork River and its tributaries.
- (4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.
- (5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:
 - (a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;
 - (b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
 - (c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;
 - (d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;
 - (e) Cave Run Lake; or
 - (f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.
- (6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.
- (7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:
 - (a) For twenty-four (24) hours a day from January 1 through May 31; and
 - (b) From sunset to sunrise from June 1 through December 31.
- (8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.
- (9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.
- (10) A person shall not snag on the Tennessee River:
 - (a) Under the U.S. 62 bridge;
 - (b) Under the P & L Railroad bridge; or
 - (c) From the fishing piers located below the U.S. 62 bridge.
- (11) There shall not be a daily creel limit for rough fish except:
 - (a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;
 - (b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp; and
 - (c) 1. The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and
 - 2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.
- (12) A person shall immediately retain, and not release or cull, any gigger or snagged paddlefish.
- (13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gilled or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached; or

(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 6. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish.

Section 7. Bow Fishing. (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; or

(d) More than two (2) paddlefish daily.

(2) Any paddlefish or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or

(c) From a boat in restricted areas below navigation, power generating, or flood control dams. Approved by the Fish and Wildlife Commission

CHARLES BUSH, Deputy Commissioner

For GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 10, 2017

FILED WITH LRC: August 14, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2017 at 11:00 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable

recreational fishing opportunities.

(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 seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(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 authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires anglers to label their jugs, setlines and trotlines with the customer ID number found on their current sport fishing license.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide better protection of personal information for anglers using jugs, setlines and trotlines.

(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 anglers who fish with jugs, setlines and trotlines.

(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: Anglers using jugs, setlines or trotlines will be required to label their gear with their customer ID number provided on their current fishing license.

(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 entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers will not have to provide personal information on their fishing gear that would be visible to the public.

(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? No. Tiering is not applied because all anglers using jugs, setlines or trotlines are required to

label their gear in the same way.

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 establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(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? 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:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Forestry (Amendment)

402 KAR 3:010. Timber sales.

RELATES TO: KRS 149.010, 149.020

STATUTORY AUTHORITY: KRS 149.010, 149.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products thereon. This administrative regulation establishes the requirements of major and minor timber sales.

Section 1. Definitions. (1) "Director" means the director of the Division of Forestry.

(2) "Major timber sales" means sales of merchantable timber with a return of \$25,000 or more in cash receipts to the Division of Forestry.

(3) "Minor timber sales" means sales of merchantable timber with a return of less than \$25,000 in cash receipts to the Division of

Forestry.

Section 2. Major Timber Sales from State Forests. Timber may be harvested from a state forest for sale pursuant to KRS 149.020 [and shall comply with Major Timber Sales on state forest property; Forestry Guideline Memorandum 14-01]. Major timber sales shall be conducted in accordance with the requirements of this section. (1) Advertisement.

(a) The Division of Forestry shall mail a timber sale packet to each prospective buyer a minimum of three (3) weeks before bid opening. The sale shall be advertised at least one (1) time in three (3) local newspapers or three times (3) in one (1) local newspaper.

(b) A timber sale packet shall be prepared for each sale and shall include a:

1. Timber Sale Prospectus, including pertinent details of the sale;

2. [Form SF-4,] Bid for advertised timber;

3. Summary of Timber Marked if the trees are individually designated, or a Cruise Summary if it is a boundary sale;

4. [Form SF-3,] Timber Sale Contract;

5. Map of the sale area; and

6. Self-addressed sealed bid envelope.

(2) Contract.

(a) Timber shall be sold by written timber sales contract. The terms shall be adequate in the judgment of the director[,] to protect the interests of the Commonwealth.

1. The timber sale contract shall be awarded immediately after bid opening.

2. Full payment for the timber sold shall be submitted within five (5) working days of awarding the contract.

(b) A certified check, made payable to Kentucky State Treasurer in an amount not less than \$2,500 or more than ten (10) percent of the established minimum bid, shall be required as a sign of good faith to accompany each bid.

1. The bid shall be considered as part of the total sale price of the successful bidder.

2. Deposits of unsuccessful bidders shall be returned.

(c) As a guarantee of the performance of the terms of the contract, the successful bidder shall, within five (5) days of the date of the contract, deposit with the Division of Forestry a certified check as performance bond in the amount of not more than ten (10) percent of the established minimum bid, but not less than \$2,500.

1. In lieu of the posting of the certified check as a performance bond, the successful bidder may post a surety bond with surety satisfactory to the Division of Forestry.

2. The bond shall be held until the completion of the terms of the contract.

(3) Compliance.

(a) The timber purchaser shall be required to comply with all timber sale contract requirements.

1. During ongoing harvesting activities, the operation shall be inspected by the local state forest administrator at least once every two (2) weeks to access compliance and to be available to answer any questions the purchaser may have.

2. If the purchaser is found in non-compliance with the contract, then the purchaser shall be informed and told what corrective measures shall be taken.

(b) The timber purchaser shall be required to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(c) If the purchaser fails or refuses to comply with the direction given by the state forest administrator, then the operation shall be suspended or terminated in accordance with the timber sale contract.

(d)[(e)] Upon satisfactory completion of all terms of the contract and payment of any damages incurred, the Division of Forestry shall release the purchaser's performance bond.

(4) Minimum Bid. A minimum acceptable bid shall be determined for each sale and shall be stated as a part of the timber sale packet advertisement.

(a) A guide for determining the minimum bid shall be calculated by indexing the current price of No. 1 common lumber for each

species, multiplying by the general profit or risk percentage and commission for industry in the particular area of the sale, and subtracting average logging, milling and drying cost.

(b) The price of No. 2 common lumber may be substituted for No. 1 common lumber on low quality species.

(c) The director may adjust the minimum bid established in subsection (4) of this section, as necessary, based on the director's professional knowledge, general market conditions in the local area, and the special characteristic of the individual sale.~~This calculation may be altered in accordance with direction given in the Major Timber Sales on state forest property, Forestry Guideline Memorandum 14-01.~~

(5) Negotiated Sale. If bids are not received on an advertised tract of timber, the Division of Forestry, with the approval of the director, may negotiate the sale of the tract of timber if it is judged in the best interest of the Division of Forestry and the Commonwealth.

(a) Negotiated sales shall be for no less than the minimum bid.

(b) The contract shall be executed within six (6) months of the bid opening date.

Section 3. Minor Timber Sales from State Forests. (1) Timber may be harvested from a state forest for sale pursuant to KRS 149.020~~[and Minor Timber Sales on state forest property, Forestry Guideline Memorandum 14-02].~~ Minor timber sales shall require:

(a) A performance bond of \$500 or five (5) percent of the winning bid amount, whichever is greater;~~[and]~~

(b) Full payment for products and performance bonds, if necessary, to be made within five (5) working days of execution of the permit;~~and~~

(c) The timber purchaser to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(2) A potential buyer[buyers] for minor timber sales shall notify the division[submit Form SF-2, Timber Sale Permit,] and the sales shall be carried out under the supervision of the Division of Forestry.

(3) If time is insufficient, harvest or salvage operations in preparation for land use change as approved by the director of the Division of Forestry may exceed the \$25,000 maximum limitation. ~~[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

(a) ~~"Major Timber Sales on state forest property", Forestry Guideline Memorandum 14-01, July 24, 2014;~~

(b) ~~"Minor Timber Sales on state forest property", Forestry Guideline Memorandum 14-02, July 24, 2014;~~

(c) ~~"Free removal of Forest Products on state forests", Forestry Guideline Memorandum 14-03, July 24, 2014;~~

(d) ~~"Rural Community Fire Protection", Forestry Guideline Memorandum 14-04, August 4, 2014;~~

(e) ~~"Timber Sale Permit", SF-2, November 2009;~~

(f) ~~"Timber Sale Contract", SF-3, November 2009; and~~

(g) ~~"Bid for Advertised Timber", SF-4, November 2009.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until

September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements of major and minor timber sales.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on bid procedures to individuals interested in harvesting timber on state properties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This administrative regulation provides details on the process to follow when harvesting timber on state property.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This administrative regulation assists in the administration of the statutes by providing information on major and minor timber sales from state owned properties.

(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 removes the material incorporated by reference. The information will be captured by the bid preparation materials and timber sale contract required for both major and minor timber sales.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the forms incorporated by reference and will provide more flexibility not only to the buyer but also to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This amendment will remove the requirement for the individual interested in buying the timber to fill out division forms prior to bidding on timber from state lands.

(d) How the amendment will assist in the effective administration of the statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. The amendment will remove the unnecessary step of requiring the bidder to fill out forms as part of the timber sale packet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 10 state forests and 1,567 loggers who could bid on these harvesting operations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will not be required to fill out forms as part of the timber sale packet.

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

question (3): There will be a minor cost savings to the proposed bidder. The bidder will no longer be required to fill out forms as part of their bid packet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Logging operators will benefit by not being required to fill out forms in the timber sales packet.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that harvest timber within the Commonwealth are required to follow these standards.

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 Division of Forestry.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 149.344.

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 new administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Forestry (Amendment)

402 KAR 3:030. Best management practices for timber harvesting operations.

RELATES TO: KRS 149.330, 149.332, 149.334, 149.344,

149.346, 149.348, 149.350, 149.355, 224.10-100, 224.71-110, 224.71-120

STATUTORY AUTHORITY: KRS 149.330, [149.334(5)], 149.344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This administrative regulation establishes the best management practices for timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority.

Section 1. A logger or operator engaged in timber harvesting operations shall comply with the provisions of the silviculture section of The Kentucky Agriculture Water Quality Plan, Best Management Practices, required by KRS 224.71-110 and 224.71-120[Section 1, Silviculture].[Section 2, Incorporation by Reference. (1) "The Kentucky Agriculture Water Quality Plan, Best Management Practices, Section 1, Silviculture", March 2014, is incorporated by reference. (2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Division of Forestry, 627 Commanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the best management practices for timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority.

(b) The necessity of this administrative regulation: This administrative regulation is necessary establish the best management practices for timber harvesting operations to include in the Agriculture Water Quality Plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This administrative regulation establishes the best management practices for the logger or operator to follow.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This administrative regulation incorporates by reference the Agriculture Water Quality Plan that includes the best management practices the logger or operator is to use.

(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 simply references the Agriculture Water Quality Plan and the statutory requirement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to direct the regulated community to the most recent version of the Agriculture Water Quality Plan.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This amendment is necessary to direct the regulated community to the most recent version of the Agriculture Water Quality Plan.

(d) How the amendment will assist in the effective administration of the statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This amendment assists in the effective administration of the statutes by referencing the Agriculture Water Quality Plan and the statutory citation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all logging operators in the Commonwealth. There are approximately 1,567 loggers in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required to use the most recent version of the Agriculture Water Quality Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with this proposal are difficult to predict as they will depend on the best management practices to be used. Not every site will use every BMP. They will be site specific.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Logging operators will benefit by having the most recent information to follow regarding best management practices.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There

will not be a need to increase fees or funding related to the proposed amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that harvest timber within the Commonwealth are required to follow these standards.

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 Division of Forestry.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 149.344.

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 new administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS[Chapter 13A,] 350.028, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[in pertinent part] requires the cabinet to promulgate [rules and] administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation establishes definitions for[provides for the defining of certain essential] terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected

by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrative hearing" means a formal adjudicatory hearing conducted pursuant to 400 KAR 1:090 and 400 KAR 1:110~~[405 KAR 7:091 and 405 KAR 7:092]~~ before the cabinet.

(3) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(4) "Affected area" means any land or water area that ~~[which]~~ is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(6) "Application" means the documents and other information filed with the cabinet seeking issuance of permits,~~;~~ revisions,~~;~~ amendments,~~;~~ renewals,~~;~~ and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined by ~~[in]~~ KRS 350.010.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and includes~~[shall also include]~~ all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(11) "Cabinet" is defined by~~[in]~~ KRS 350.010.

(12) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(13) "C.F.R." means Code of Federal Regulations.

(14) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM

Standard D 388-77.

(15) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity could~~[may]~~ cause any disturbance of the land surface or could~~[may]~~ cause any appreciable effect upon land, air, water, or other environmental resources.

(16) "Coal mine waste" means coal processing waste and underground development waste.

(17) "Coal processing waste" means materials~~[which are]~~ separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(18) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and~~[which is]~~ supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(19) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(20) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by~~[Section 7 of]~~ 405 KAR 7:035, Section 7.

(21) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(22) "Day" means calendar day unless otherwise specified to be a working day.

(23) "Department" means the Department for Natural Resources.

(24) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(26) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(27) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, could~~[may]~~ be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(28) "Final order" means final order of the secretary, which could ~~[may]~~ include findings of fact, conclusions of law, and an order.

(29) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but does~~[shall]~~ not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(30) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of

government, or a cabinet, department, agency, or office of the unit that [which], directly or through another unit of government, finances construction.

(31) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that the materials [they] are considered water saturated.

(32) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct administrative hearings; the term includes the chief hearing officer.

(33) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(34) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(35) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(36) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(37) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(38) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(39) "Individual"~~[-as used in 405 KAR 7:091 and 7:092.]~~ means a natural person.

(40) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities; or [-]

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(41) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order, or any other document that[which] commences an administrative

proceeding.

(42) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes~~[-but is not limited to,]~~ in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(43) "Interim report" means statements made by a hearing officer in written form that[which] are not intended to be considered by the secretary and that[which] are not subject to judicial review.

(44) "KAR" means Kentucky administrative regulations.

(45) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(46) "KRS" means Kentucky Revised Statutes.

(47) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(48) "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(49) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(50) "MSHA" means Mine Safety and Health Administration.

(51) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet that establishes[which sets forth] with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions that[which] the authorized representative of the cabinet determines to have occurred based upon an [his] inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(52) "Office", as used in 405 KAR 7:091 and 7:092, means the office of administrative hearings.

(53) "Operations" is defined by[in] KRS 350.010.

(54) "Operator" is defined by[in] KRS 350.010.

(55) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval that[which]:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(56) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(57) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(58) "Overburden" is defined by[in] KRS 350.010.

(59) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of

KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(60) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(61) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~.

(62) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(63) "Person" is defined by in KRS 350.010.

(64) "Prime farmland" means those lands~~which are~~ defined by the Secretary of Agriculture in 7 C.F.R. 657 and ~~that~~which have been "historically used for cropland"~~as that phrase is defined above~~.

(65) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(66) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations ~~that could~~which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(67) "Reclamation" is defined by in KRS 350.010.

(68) "Record" means the transcript of a proceeding, if any, and rulings; and all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon, proposed findings and recommended orders; and legal briefs and orders.

(69) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(70) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(71) "SCS" means Soil Conservation Service.

(72) "Secretary" is defined by in KRS 350.010.

(73) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression ~~that~~which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that

the secondary sedimentation structures drain to a sedimentation pond.

(74) "Shadow area" means the surface area overlying underground mine works and surface disturbances associated with auger and in situ mining.

(75) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists ~~that~~which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

~~(76)~~(75) "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

~~(77)~~(76) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

~~(78)~~(77) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest~~;-~~

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties~~;-~~

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons~~;-and~~;-

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

~~(79)~~(78) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

~~(80)~~(79) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

~~(81)~~(80) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including~~;-but not limited to~~;- the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

~~(82)~~(81) "Surface coal mining and reclamation operations" is defined by in KRS 350.010.

~~(83)~~(82) "Surface coal mining operations" is defined by in KRS 350.010.

~~(84)~~(83) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(85) [(84)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(86) [(85)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(87) [(86)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(88) [(87)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(89) [(88)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(90) [(89)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 7.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 7.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 7 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulations in Chapter 7.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 7.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an

underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 707.5, 730

2. State Compliance Standards. KRS 350.028, 350.465.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 707.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 7:095. Assessment of civil penalties.

RELATES TO: KRS 350.990(1), 30 C.F.R. Parts 730-733, 735, 845, 917, 30 U.S.C. 1268

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 350.990(1), 30 C.F.R. Parts 730-733, 735, 845, 917, 30 U.S.C. 1268

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.990(1) directs the cabinet to promulgate an administrative regulation setting forth the method for calculating monetary penalties. This administrative regulation establishes how and when penalties will be assessed and includes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

Section 1. How Penalty Assessments are Made. The cabinet shall review each violation, condition or practice cited in a notice of noncompliance and order for remedial measures or order of cessation and immediate compliance in accordance with the assessment procedures described in 405 KAR 7:092 and this administrative regulation to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Section 2. When Penalty will be Assessed. (1) The cabinet shall assess a penalty for each violation, condition or practice cited in an order of cessation and immediate compliance.

(2) The cabinet shall assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures, if the violation is assigned thirty-one (31) points or more under the point system described in Section 3 of this administrative regulation.

(3) The cabinet may assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures if the violation is assigned thirty (30) points or less under the point system described in Section 3 of this administrative regulation. In determining whether to assess a penalty, the cabinet shall consider the factors listed in 405 KAR 7:092, Section 3(2).

Section 3. Point System for Penalties. The cabinet shall use the point system described in this section to determine the amount of any penalty. Points shall be assigned as follows:

(1) History of previous violations. The cabinet shall assign up to thirty (30) points based on the history of previous violations. One (1) point shall be assigned for each past violation cited in a notice of noncompliance and order for remedial measures. Five (5) points shall be assigned for each violation (but not a condition or practice) cited in an order of cessation and immediate compliance. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(a) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one (1) year.

(b) No violation for which the notice or order has been vacated shall be counted; and

(c) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The cabinet shall assign up to thirty (30) points based on the seriousness of the violation, as follows:

(a) Probability of occurrence. The cabinet shall assign up to fifteen (15) points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

1. No probability of occurrence; zero points.

2. Insignificant probability of occurrence; one (1) to four (4) points.

3. Unlikely probability of occurrence; five (5) to nine (9) points.

4. Likely probability of occurrence; ten (10) to fourteen (14) points.

5. Occurred; fifteen (15) points.

(b) Extent of potential or actual damage. The cabinet shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

1. If the damage or impact which the violated standard is

designed to prevent would remain within the coal exploration, [or] permit area, or shadow area, the cabinet shall assign zero to seven (7) points, depending on the duration and extent of the damage or impact.

2. If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration, [or] permit area, or shadow area, the cabinet shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(c) Administrative requirements. In the case of a violation of an administrative requirement, such as a requirement to keep records, the cabinet shall, in lieu of paragraphs (a) and (b) of this subsection, assign up to fifteen (15) points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. The cabinet shall assign up to twenty-five (25) points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(a) A violation, condition or practice which occurs through no negligence shall be assigned no penalty points for negligence. No negligence means an inadvertent violation, condition or practice which was unavoidable by the exercise of reasonable care.

(b) A violation, condition or practice which is caused by negligence shall be assigned twelve (12) points or less, depending on the degree of negligence. Negligence means the failure of a permittee to prevent the occurrence of the violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care.

(c) A violation, condition or practice which occurs through a greater degree of fault than negligence shall be assigned thirteen (13) to twenty-five (25) points, depending on the degree of fault. A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(4) Good faith in attempting to achieve compliance. The cabinet shall subtract up to fifteen (15) points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation, condition or practice. Points shall be subtracted as follows:

(a) Rapid compliance. Six (6) to fifteen (15) points shall be subtracted from the total points if the person to whom the notice or order was issued took extraordinary measures to abate the violation, condition or practice in the shortest possible time and that abatement was achieved before the time set for abatement.

(b) Normal compliance. Zero to five (5) points shall be subtracted from the total points if the person to whom the notice or order was issued abated the violation, condition or practice by the abatement date.

Section 4. Determination of Amount of Penalty. For each violation, condition, or practice cited in a notice or order, the cabinet shall determine the amount of any civil penalty by converting the total number of points assigned under Section 3 of this administrative regulation to a dollar amount, according to the schedule in Appendix A of this administrative regulation.

Section 5. Assessment of Separate Violations for Each Day.

(1) The cabinet may assess separately a civil penalty for each day from the date of issuance of the notice or order to the date of abatement of the violation. In determining whether to make such an assessment, the cabinet shall consider the factors listed in 405 KAR 7:092, Section 3(2) and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two (2) or more days and which is assigned more than seventy (70) points under Section 3 of this administrative regulation, the cabinet shall assess a civil penalty for a minimum of two (2) separate days.

(2) In addition to the civil penalty provided for in subsection (1) of this section, whenever a violation, condition or practice

contained in a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750 shall be assessed for each day during which such failure continues according to the provisions of 405 KAR 7:092, Section 13(2).

Section 6. Waiver of Use of Point System to Determine Civil Penalty. (1) The cabinet upon its own initiative, or upon a written request by the person to whom the notice or order was issued that is received within fifteen (15) days of mailing of the proposed penalty assessment, may waive the use of the point system contained in Section 3 of this administrative regulation to set the civil penalty, if the cabinet determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the cabinet shall not waive the use of the point system or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate the violation, condition or practice. The basis for every waiver shall be fully explained and documented in the records of the case.

(2) If the cabinet waives the use of the point system, it shall use the criteria set forth in 405 KAR 7:092, Section 3(2) to determine the appropriate penalty. When the cabinet has elected to waive the use of the point system, it shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

Section 7. Procedures for Assessment of Civil Penalties Document. "Procedures for Assessment of Civil Penalties", Kentucky Department for Natural Resources, January 6, 1995, is hereby incorporated by reference. This document may be reviewed or a copy may be obtained, subject to applicable copyright law, at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

APPENDIX A OF 405 KAR 7:095			
Penalty Schedule			
Point	Dollars	Points	Dollars
1	20	36	1,600
2	40	37	1,700
3	60	38	1,800
4	80	39	1,900
5	100	40	2,000
6	120	41	2,100
7	140	42	2,200
8	160	43	2,300
9	180	44	2,400
10	200	45	2,500
11	220	46	2,600
12	240	47	2,700
13	260	48	2,800
14	280	49	2,900
15	300	50	3,000
16	320	51	3,100
17	340	52	3,200
18	360	53	3,300
19	380	54	3,400
20	400	55	3,500
21	420	56	3,600
22	440	57	3,700
23	460	58	3,800
24	480	59	3,900
25	500	60	4,000
26	600	61	4,100
27	700	62	4,200
28	800	63	4,300
29	900	64	4,400
30	1,000	65	4,500
31	1,100	66	4,600
32	1,200	67	4,700

33	1,300	68	4,800
34	1,400	69	4,900
35	1,500	70 and above	5,000

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes how and when penalties will be assessed and includes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assess penalties for coal mining violations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.990(1) directs the cabinet to promulgate an administrative regulation setting forth the method for calculating monetary penalties. This administrative regulation conforms to the authorizing statutes by establishing those methods.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary make changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by ensuring shadow area is included in the process of calculating assessments.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350. 990(1) directs the cabinet to promulgate an administrative regulation setting forth the method for calculating monetary penalties. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be subject to the same requirements prior to the passage of HB 234. Due to the amendment to the definition of "Permit Area" it was necessary to include shadow area in the language related to calculating assessments in certain areas.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with the proposal from HB 234. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.465, 350.990(1), 30 C.F.R. Parts 730-733, 735, 845, 917, 30 U.S.C. 1268.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the

amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 845

2. State Compliance Standards. KRS 350.028, 350.990(1).

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to assessment of civil penalties.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 8.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials that [which], if exposed to air, water, or weathering processes, form acids that could [may] create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical

processing and public review.

(6) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(7) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(9) "Approximate original contour" is defined in KRS 350.010.

(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(13) "Cabinet" is defined in KRS 350.010.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under

SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(16) "C.F.R." means Code of Federal Regulations.

(17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or

2. Other community group;

(b) As a facility for the following purposes:

1. Educational;

2. Cultural;

3. Historic;

4. Religious;

5. Scientific; or

6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service.

(25) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(27) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(28) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall

include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(29) "Day" means calendar day unless otherwise specified to be a working day.

(30) "Department" means the Department for Natural Resources.

(31) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(33) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(35) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(36) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(37) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(38) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(39) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(40) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(41) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(42) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(43) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(44) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(45) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(46) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or

more of the ten (10) years immediately preceding the:

1. Application; or
2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and
2. The land under consideration.

(47) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(49) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(50) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(51) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.

(52) "Incidental boundary revision" means an extension to a permit area or shadow area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area or shadow area.

(53) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(54) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(55) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(56) "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(57) "KAR" means Kentucky administrative regulations.

(58) "KRS" means Kentucky Revised Statutes.

(59) "Land use" means specific functions, uses, or

management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(60) "Material damage", as used in 405 KAR 8:040, Section 26 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(61) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(62) "MRP" means mining and reclamation plan.

(63) "MSHA" means Mine Safety and Health Administration.

(64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(65) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(66) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(67) "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(68) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(69) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26, and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(70) "Operations" is defined in KRS 350.010.

(71) "Operator" is defined in KRS 350.010.

(72) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a

cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or
2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(73) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(74) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(75) "Overburden" is defined in KRS 350.010.

(76) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this subsection:

- (a) 1. Being a permittee of a surface coal mining operation;
2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or
3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;
2. Being the operator of a surface coal mining operation;
3. Having the ability to commit the financial or real property assets or working resources of an entity;
4. Being a general partner in a partnership;
5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or
6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(77) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(78) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(79) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(80) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(81) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(82) "Permit area" means the area of land indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface~~

~~coal mining and reclamation operations under that permit~~].

(83) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(84) "Person" is defined in KRS 350.010.

(85) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(86) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(87) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(88) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(89) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(90) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(91) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area and shadow area.

(92) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(93) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(94) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(95) "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(96) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(97) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(98) "Reclamation" is defined in KRS 350.010.

(99) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(100) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(101) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(102) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(103) "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(104) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(105) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(106) "SCS" means Soil Conservation Service.

(107) "Secretary" is defined in KRS 350.010.

(108) "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

(109) "Shadow area" means the surface area overlying underground mine works and surface disturbances associated with auger and in situ mining.

(110) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or
2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(111)[(140)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(112)[(141)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(113)[(142)] "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS 350.450(4)(c).

(114)[(143)] "SMCRA" means Surface Mining Control and

Reclamation Act of 1977 (PL 95-87), as amended.

(115)[(144)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(116)[(145)] "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(117)[(146)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(118)[(147)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(119)[(148)] "Steep slope" means any slope of more than twenty (20) degrees.

(120)[(149)](a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(121)[(140)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(122)[(141)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(123)[(142)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation

licensed to do business as a surety in the Commonwealth of Kentucky.

(124)[(123)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(125)[(124)] "Surface coal mining operations" is defined in KRS 350.010.

(126)[(125)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(127)[(126)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(128)[(127)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(129)[(128)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(130)[(129)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(131)[(130)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(132)[(131)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(133)[(132)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(134)[(133)] "TRM" means Technical Reclamation Memorandum.

(135)[(134)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(136)[(135)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(137)[(136)] "USDA" means United States Department of Agriculture.

(138)[(137)] "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(139)[(138)] "USGS" means United States Geological Survey.

(140)[(139)] "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(141)[(140)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(142)[(141)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(143)[(142)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. ~~[Section 2. Incorporation by Reference. (1) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials, is incorporated by reference.~~

~~(2) It may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,

300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 8.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 8 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 8.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and

restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028(1), (5), 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and 350.465

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amendment)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 470x-6, 661-667e16, 668-668d, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation establishes provisions for permits to conduct these operations, including when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8[for the area to be affected by the operations].

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations or underground-only operations shall file a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to Section 23 of this administrative regulation, but shall not begin surface coal

mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661-667d); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470x-6); and the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d), as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties deem appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit ~~shall~~ may submit to the cabinet a Preliminary Application, MPA-00.

(2) If the permittee chooses to submit a Preliminary Application, the Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area, shadow area, and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection under Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted with attachments, plans, maps, certifications, drawings, calculations, or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms shall be submitted by an applicant:

- 1.[Preliminary Application, MPA-00;
- 2.] Permittee Information for a Mining Permit, MPA-01;
- 2.[3.] Operator Information for a Mining Permit, MPA-02;
- 3.[4.] Technical Information for Mining Permit, MPA-03;
- 4.[5.] Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B.;
- 5.[6.] Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03.20.1.C.;
- 6.[7.] Update of Permittee or Operator Information, MPA-05;

7.[8-] Change of Corporate Owners, Officers or Directors, MPA-06;

8.[9-] Application to Transfer a Mining Permit, MPA-07;

9.[10-] Revision Application to Change Operator, MPA-08;

10.[11-] Application for Renewal of a Mining Permit, MPA-09;

11.[12-] Application for a Coal Marketing Deferment, MPA-10; and

12.[13-] Minor Field Revision Application Form, SME 80.

(d) The application shall be complete with respect to all information required by KAR Title 405 and include, at a minimum for:

1. Surface mining activities, all the applicable information required pursuant to 405 KAR 8:030;

2. Underground mining activities, all the information required pursuant to 405 KAR 8:040; and

3. Special types of surface coal mining and reclamation operations, all the information required pursuant to 405 KAR 8:050.

(e) An application shall not be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information established in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations that collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If information marked on the preliminary map required pursuant to Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area, shadow area, and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified

professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. An acreage fee shall not be required for surface areas overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. Application is submitted to the cabinet; or

2. Applicant receives the notification from the cabinet pursuant to Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application shall be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, in accordance with this section that shall consist of an affidavit from

the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum, the following information:

- (a) The name and business address of the applicant;
- (b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used.

(c) The location where a copy of the application is available for public inspection pursuant to subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice pursuant to 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;

(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of

gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:091 and 7:092 shall not apply to the conduct of the conference.

1. The conference shall be conducted by a representative of the cabinet, who shall accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure pursuant to subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or may be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9.

(d) Confidential information shall be limited to the following:

1. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. Information on the nature and location of archaeological resources on public land and Indian land as required pursuant to the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in

compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established in Section 16 of this administrative regulation, the cabinet shall either notify the applicant:

(a) Of the cabinet's decision to issue or deny the application; or

(b) In writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations pursuant to SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before

issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required pursuant to subparagraph 1 of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(e) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. An application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area and shadow area;

(4) The proposed permit area or shadow area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations will not adversely affect any

publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that no additional protection measures are necessary;

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544);

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

(20) The surface coal mining operation will not adversely affect

a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established in 405 KAR 24:040; or

(21) For a proposed remaining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application for a minor revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be as follows:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the department.

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established in the permit. (1) General. The following general conditions shall apply to a permit issued by the cabinet:

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(b) The permittee shall conduct all surface coal mining and reclamation operations as established in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR

8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures established in the permit as necessary to prevent significant, imminent environmental harm that may affect the health or safety of the public; and

2. Utilizing any methods established in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to the permit or after an order for cessation and immediate compliance is issued pursuant to 405 KAR 12:020, Section 3, for operations conducted pursuant to the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been a change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8 during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the

bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations established in the existing application and approved pursuant to the current permit;

(b) If a revision is required by an order issued pursuant to Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required pursuant to 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of a scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that may be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance to approximate original contour requirements;

4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. A change that may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; and

9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision under subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If a proposed minor revision is actually a major revision pursuant to Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons that could have an interest or may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department. The following shall be a minor field revision, unless the number of persons that potentially could have an interest or may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed pursuant to this paragraph.

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (pursuant to paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

a. The drainage area to the structure shall remain the same as the original design;

b. The proposed location shall not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and

b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. A change in tree species is not involved unless concurrently approved pursuant to subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, and a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation

from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits.

25. Except as provided in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. Structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required

to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Is contiguous to the current permit area;

3. Is within the same watershed as the current permit area;

4. Is required for an orderly continuation of the mining operation;

5. Involves mining of the same coal seam or seams as in the current permit;

6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;

8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Does not constitute a change in the current method of mining; and

10. Shall be reclaimed in conformity with the current reclamation plan.

(g) Extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances shall be minor revisions.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for

approval of the change.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 8:040, except information pursuant to Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those administrative regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required pursuant to Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a. The permit number;

b. The geographic location of the permit area;

c. The name and business address of the permittee;

d. A statement that the permittee proposes to change the operator approved in the permit;

e. The names and business addresses of the currently approved operator and the proposed operator;

f. The cabinet address to which written comments may be sent pursuant to paragraph (f) of this subsection; and

g. The time available for submission of the comments.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to the criteria in Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for ~~shadow area~~~~[a surface area overlying underground workings]~~ that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter 8 shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. An application for renewal of a permit shall be submitted within the time established by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

(c) Evidence that liability insurance pursuant to 405 KAR 10:030, Section 4, shall be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of \$750;

(e) Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining if to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the

applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review established in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria established in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee; and

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets all requirements necessary to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice established in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities pursuant to the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of

reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted pursuant to a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. A successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability pursuant to KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved, as established in Sections 20 (permit revisions) or 21 (permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to KAR Title 405.

(2) A fee for an amendment to existing permits shall be submitted to the cabinet as established in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that may be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 405 KAR 7:092, Section 8.

(2) Any applicant or any person with an interest that may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:

(a) Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits established in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of

violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit pursuant to subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet pursuant to subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, August 2017[2040];

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010;

(c) "Operator Information for a Mining Permit", MPA-02, August 2010;

(d) "Technical Information for a Mining Permit", MPA-03, August 2017[June 2013];

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Update of Permittee or Operator Information", MPA-05, August 2010;

(h) "Change of Corporate Owners, Officers or Directors", MPA-06, August 2010;

(i) "Application to Transfer a Mining Permit", MPA-07, June 2013;

(j) "Revision Application to Change Operator", MPA-08, August 2010;

(k) "Application for Renewal of a Mining Permit", MPA-09, August 2017[2040];

(l) "Application for a Coal Marketing Deferment", MPA-10, August 2017

(m) "Minor Field Revision Application Form", SME 80, revised August 2010; and

(n)[(m)] "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions for permits to conduct surface coal mining and reclamation operations and underground only mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define provisions for permitting of surface coal mining and reclamation operations and underground only mining operations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350.060(12) directs the cabinet to promulgate administrative regulations related to permitting of operations with surface effects associated with underground mining and other surface coal mining and reclamation operations. This administrative regulation establishes requirements for granting a permit for underground coal mining operations

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for granting a permit for underground coal mining operations.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation as it applies to shadow area.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying provisions for permitting of surface coal mining and reclamation operations and underground only mining operations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730, 773-775, 777, 778.17.

2. State Compliance Standards. KRS 350.028 and 350.360.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for acquiring a permit prior to performing mining operations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 350.421, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 - 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.151, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 - 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for granting a permit for underground

coal mining operations. This administrative regulation differs from the corresponding federal regulations as follows:

(1) Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 C.F.R. 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This administrative regulation establishes that underground mines and surface mines shall be subject to the same requirements regarding water supply replacement, consistent with KRS 350.421.

(2) Section 26(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of structures for which a presubsidence condition survey is required under 405 KAR 18:210, Section 1(4). The corresponding federal regulation does not require a sample letter. The federal regulations are structured so that these presubsidence surveys shall be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow the detailed surveys of structures to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to owners of structures after permit issuance.

(3) Section 26 of this administrative regulation does not include the requirement at 30 C.F.R. 784.20(a)(3) for detailed surveys of the presubsidence condition of structures that may be damaged by subsidence. These surveys may be submitted after permit issuance and therefore are required under 405 KAR 18:210 rather than this administrative regulation.

(4) Section 26 of this administrative regulation applies to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation is limited to "drinking, domestic, or residential" water supplies. This administrative regulation applies to water supplies protected under KRS 350.421, whereas the federal regulation applies to water supplies protected under 30 U.S.C. 1309a.

(5) Section 32(3)(e) of this administrative regulation requires that the submitted application shall include a determination of probable hydrologic consequences shall include a finding on if the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas. The corresponding federal requirement at 30 C.F.R. 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended July 16, 1994. The federal regulation addresses water supplies protected under 30 U.S.C. 1309a, effective October 24, 1992.

(6) Section 34(3) and (5) of this administrative regulation require submission to the cabinet after approval by the Mine Safety and Health Administration (MSHA) of a:

- (a) Copy of the final approved design plans for impounding structures;
- (b) Copy of all correspondence with MSHA;
- (c) Copy of technical support documents requested by MSHA; and
- (d) Notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) Applicability.

- (a) This administrative regulation shall apply to a person who applies for a permit to conduct underground mining activities.
- (b) The requirements set forth in this administrative regulation

specifically for applications for permits to conduct underground mining activities, are in addition to the requirements for:

1. Permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010; and

2. The submission of a Technical Information for a Mining Permit, Form MPA-03, incorporated by reference in 405 KAR 8:010.

(c) This administrative regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

- 1. Legal, financial, compliance, and related information;
- 2. Environmental resources information; and
- 3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this administrative regulation.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a Social Security number shall be voluntary:

(a) A statement as to if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b) The name, address, telephone number and, if applicable, Social Security number and employer identification number of the:

- 1. Applicant;
- 2. Applicant's resident agent; and
- 3. Person who will pay the abandoned mine land reclamation fee;

(c) For each person who owns or controls the applicant:

1. The person's name, address, Social Security number, and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

1. Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(e) The names and addresses of:

1. Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

2. The holders of record of any leasehold interest in areas to be affected by surface operations and facilities and the holders of record of any leasehold interest in the coal to be mined; and

3. Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(f) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area;

(g) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine

associated structures that require MSHA approval;

(h) Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter; and

(i) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands that are contiguous to the area to be covered by the permit.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (1)(a) through (d) of this section.

(3) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(4) The permittee shall submit updates in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection. The update shall include:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) If the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. (1) Each application shall contain:

(a) A statement [øf] if the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1. Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

(b) If any suspension, revocation, or forfeiture, as established in paragraph (a) of this subsection, has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3. The current status of the permit, bond, or similar security involved;

4. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of

issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

b. The current status of the proceedings and of the violation notice; and

c. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, if necessary, the applicant shall update the application to indicate what change, if any, has occurred in the information previously submitted under subsection (1) of this section.

(3) Upon request by a small operator, the cabinet shall provide to the small operator, with regard to a person under subsection (1) of this section identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and 405 KAR Chapters 7 through 26.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and if that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities in which the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain, for lands to be affected by those operations within the permit area:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes, or require right of entry for shadow area.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on if the proposed permit area and shadow area are[is] within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the

requirements of 405 KAR 24:040, Section 2(6), shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

- (1) Type of permit or license;
- (2) Name and address of issuing authority;
- (3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area, and adjacent areas, as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas, or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area, and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) According to historical databases, the cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information, which has been collected, analyzed, and submitted, which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation that shall be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area, shadow area, and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required by 405 KAR can be accomplished and if the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period that, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall demonstrate if the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit, shadow, and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet if this information is:

1. Needed in preparing the cumulative impact assessment; and
2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 C.F.R. Parts 136 and 434. All water quality sampling shall be conducted according to either methodology established in this subsection if feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area and shadow area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material collected using acceptable sampling techniques.

1.a. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

b. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined that may be impacted by the mining operation.

2. If aquifers within the permit area and shadow area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata that lie between the coal seam and the aquifer.

3. The areal and vertical density of sampling shall, at a

minimum, be sufficient to determine the distribution of strata that have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers that may be adversely affected.

4. If the vertical extent, and the areal and vertical density of sampling established in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information;

(b)1. To identify strata that have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata that have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined;

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance; and

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(2) Collection of geologic information from the permit area and shadow area as required in this subsection shall be waived in whole or in part if:

(a) The applicant can demonstrate through geologic correlation or other procedures that information collected from outside the permit area or shadow area is representative of the permit area and shadow area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

(b) Other information equivalent to that required by this subsection is available to the cabinet and is made a part of the permit application; and

(c) The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area, shadow area, and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area and shadow area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed and the structural geology and lithology of strata that may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed or the thickness and chemical characteristics of each stratum that may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed;

3. If aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers and structural geology and lithology of strata, and thickness of each stratum, if located above or below the coal seam to be mined, which lie between the coal seam and the aquifers; and

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined; and

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers that may be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit and shadow area or the collection of information for areas outside the proposed permit and shadow area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area, shadow area, and adjacent area that shall be collected and submitted and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities that are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and if possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information established in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require groundwater information in addition to that established in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area, shadow area, and adjacent area that shall be collected and submitted and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments, or other surface water bodies in the permit, shadow, and adjacent area that are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body that is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal and if possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership if appropriate, of all

streams, lakes, impoundments, and other surface water bodies that receive run-off from watersheds that will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds that will be disturbed by the mining operation that may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges that may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area that is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) If requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet shall request additional data if necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) If the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall[-] contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. The scope and level of detail for this information shall be determined by the cabinet in

consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, may include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or shadow areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or shadow areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the shadow[coal-extraction] area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(6) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine if lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland if the applicant demonstrates one (1) or more of the following:

- (a) The land has not been historically used as cropland;
- (b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist that would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation that show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and if the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey as required by this section contains soil map units that have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey as required by this section contains no soil map units that have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service in considering a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land that will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing upon application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resources or agricultural agencies.

(2) The application shall state if the proposed permit and shadow areas have[area has] been previously mined, and, if so,

the following information, if available the:

- (a) Type of mining method used;
- (b) Coal seams or other mineral strata mined;
- (c) Extent of coal or other minerals removed;
- (d) Approximate dates of past mining; and
- (e) Uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area, shadow area, and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area and shadow area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence, and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area, shadow area, and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters that will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area and shadow area;

(f) The boundaries of land within the proposed permit area and shadow area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area that the applicant has the legal right to enter upon the surface to conduct surface operations;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area and shadow area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area and shadow area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area and shadow area; and

(l) Other relevant information required by 30 C.F.R. 783.24(l).

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area, shadow area, and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or that will be used for this data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area and shadow area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area, shadow area, and

adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area, shadow area, or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area, shadow area, and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and shadow area and water wells in the permit area, shadow area, and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area and shadow area; and

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the requirements established in subparagraphs 1. through 3. of this paragraph.

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan.

2. If the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information established in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this administrative regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet if there is a material change. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area and shadow area as set forth in this section through Section 39 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area and shadow area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as established in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area, shadow area, and adjacent areas as established in paragraphs (a) through (c) of this subsection.

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area and shadow area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area and shadow area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this administrative regulation;

11. Cross-sections, at locations as required by the cabinet, based on the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point; and

13. Location of each facility that will remain on the proposed permit area and shadow area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area and shadow area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including descriptions of the:

1. Schedule of revegetation;

2. Species and amounts per acre of seeds and seedlings to be used;

3. Methods to be used in planting and seeding;

4. Mulching techniques;

5. Irrigation, if appropriate;

6. Pest and disease control measures, if any;

7. Measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and

8. A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the

use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans that have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area and shadow area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Chapter 85), the Clean Water Act (33 U.S.C. Chapter 26), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure that describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, if the structure meets the performance standards of 405 KAR Chapters 16 through 20~~, or if the structure does not meet those performance standards, a showing of if the structure meets the interim performance standards of 405 KAR Chapter 3~~.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule that shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety shall not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1)(a) The application shall include a map of the permit, shadow, and adjacent areas at a scale of 1:12,000, or larger if necessary, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of water supplies for domestic, agricultural, industrial, or other legitimate use that could be contaminated, diminished, or interrupted by subsidence.

(b) The application shall include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of structures established in paragraph (a) of this subsection or renewable resource lands or could contaminate, diminish, or interrupt water supplies for domestic, agricultural, industrial, or other legitimate use.

(c) The application shall include an example of the letter by which the applicant proposes to notify the owners of all structures under this subsection for which a presubsidence survey is required under 405 KAR 18:210, Section 1(4).

(d)1. The application shall include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial, or

other legitimate use within the permit area, shadow area, and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the application shall include documentation of the denial of access. The applicant shall pay for a technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial, or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.

2. If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this paragraph, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment, or engineering evaluation, the owner may submit in writing to the cabinet and to the permittee, a detailed description of the specific areas of disagreement. If necessary, the cabinet shall require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment, or engineering evaluation and to ensure compliance with 405 KAR 18:210.

(2) If the information submitted under subsection (1) of this section shows that no structures, or water supplies for domestic, agricultural, industrial, or other legitimate use, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies would occur as a result of mine subsidence, and if the cabinet agrees with this conclusion, no further information shall be required under this section.

(3) If the information submitted under subsection (1) of this section shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies or if other available information indicates damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall include a subsidence control plan that shall contain:

(a) A description of the method of coal removal, such as longwall mining, room and pillar removal or hydraulic mining, including the size, sequence, and timing of the development of underground workings;

(b) A map of the underground workings at a scale of 1:12,000, or larger if necessary, that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures established in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage and, if applicable, to correct subsidence related material damage;

(c) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence related damage;

(d) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, if appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 405 KAR 18:210, Section 3;

(e) Except for those areas in which planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage including:

1. Backstowing or backfilling of voids;

2. Leaving support pillars of coal;

3. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

4. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface;

(f) A description of the anticipated effects of planned subsidence, if any;

(g) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto or the written consent of the owner of the structure or facility that minimization measures not be taken or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(h) A description of the measures to be taken in accordance with 405 KAR 18:060, Section 12, and 405 KAR 18:210, Section 3, to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and

(i) Other information specified by the cabinet as necessary to demonstrate that the operation will be conducted in accordance with 405 KAR 18:210.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation, and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except if the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 18:140, and 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this administrative regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(b) A report of appropriate geotechnical analysis, if approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230;

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230; and

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained

within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) If necessary, the cabinet shall require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area, shadow area, and adjacent area and to prevent material damage to the hydrologic balance outside the permit and shadow areas.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate that protective measures are not necessary for the operation to:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8, and 9, and 405 KAR 18:080; and

5. Protect or replace the water supply of present users as required by 405 KAR 18:060, Section 12.

(c) The cabinet shall require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures established under subsection (1) of this section. The design shall include, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area, shadow area, and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the

parameters and in the detail necessary to enable the cabinet to prepare a cumulative impact assessment and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow; and
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers that are not currently being used for water supply but have the potential to be developed as a water supply source; and
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on if the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use upon application submittal.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

- (a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;
- (b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
- (c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18 and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section

32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090 and 18:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100.

(a) Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2.

(b) The plan required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application.

(c) After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160. The plan for an impounding structure that is required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to paragraphs (a) through (d) of this subsection.

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures,

and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan that includes:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, 16 U.S.C. 1531 – 1544, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved as practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if a protection and enhancement plan is necessary shall be made on a case-by-case basis in consultation with Kentucky Department of

Fish and Wildlife Resources and U.S. Fish and Wildlife.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land to be affected within the proposed permit area by surface operations and facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of the consideration that has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area to be affected by surface operations and facilities and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee shall meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Office of Mine Safety and Licensing.

Section 39. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for granting a permit for underground coal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to grant permits for underground coal mining operations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 360(12) directs the cabinet to promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations. This administrative regulation establishes requirements for granting a permit for underground coal mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for granting a permit for underground coal mining operations.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing requirements for granting a permit for underground coal mining operations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.151, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-2, 730-733, 735, 735, 773.13(a), 778, 783, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C 1276(a), 1531-1544, 30 U.S.C. 1253, 1255, 1257, 1258, 12.66, 1267.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.
Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730. 773-775, 777, 778.17.
2. State Compliance Standards. KRS 350.028 and KRS 350.060
3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for acquiring a permit prior to performing mining operations.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amendment)

405 KAR 8:050. Permits for special categories of mining.

RELATES TO: KRS 350.093, 350.445, 350.450, 350.465

STATUTORY AUTHORITY: KRS Chapter [43A,] 350.020, 350.028, 350.060, 350.093, 350.151, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations, including certain special categories of mining. This administrative regulation sets forth permit application requirements for special mining categories including mining on prime farmland, augering, in situ processes, off-site coal preparation plants, mountaintop removal mining, and mining on steep slopes. This administrative regulation sets forth the only variance from the requirement to return to approximate original contour in steep slopes. This administrative regulation sets forth the manner in which the contemporaneous reclamation requirements can be met for combined surface and underground mining activities.

Section 1. In Situ Processing Activities. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(2) Application requirements. Any application for a permit for operations covered by this section shall be made according to all requirements of this chapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operation involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 405 KAR 20:080, including:

- (a) Delineation of proposed holes and wells and production zone for approval of the cabinet;
- (b) Specifications of drill holes and casing proposed to be used;
- (c) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and
- (d) Plans for monitoring surface and groundwater and air quality, as required by the cabinet.

(3) Criteria for approval. No permit shall be issued for operations covered by this section unless the cabinet first finds, in

writing, upon the basis of a complete application made in accordance with subsection (2) of this section, that the operation will be conducted in compliance with all requirements of this chapter relating to underground mining activities, and 405 KAR 20:080 and 405 KAR Chapter 18.

Section 2. Augering. (1) General. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations. Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 405 KAR 20:030. No permit shall be issued for any operations covered by this section unless the cabinet finds, in writing, that in addition to meeting all other applicable requirements of this chapter, the operation will be conducted in compliance with 405 KAR 20:030.

(2) Augering on previously mined lands.

(a) In addition to other requirements of 405 KAR Chapter 8, each application for a permit to conduct auger mining on an area mined prior to May 3, 1978, and not reclaimed to the standards of 405 KAR, shall contain such information as the cabinet deems necessary to describe the proposed affected area and method of operation and show that the proposed method of operation will result in stable postmining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities.

(b) If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in adverse impact to the proposed permit area or adjacent area, the permit shall not be issued.

(c) The cabinet shall, consistent with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, issue a permit if the applicant demonstrates that the proposed surface coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of the previously mined area.

(d) The cabinet shall ensure that all applicable performance standards can be met.

Section 3. Prime Farmlands. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(a) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977.

(b) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this paragraph, "renewal" of a permit shall mean a decision by the cabinet to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the cabinet to allow changes in the method of mining operations within the original permit area, or the decision of the cabinet to allow incidental boundary changes to the original permit.

(c) Lands included in any existing surface coal mining operation, for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

1. Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

2. The permittee had a legal right to mine the lands prior to August 3, 1977 through ownership, contract, or lease but not including an option to buy, lease or contract; and

3. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be a part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

4. A single continuous surface coal mining operation is

presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include noncontiguous parcels if the permittee can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were a part of a single permitted operation. For the purpose of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds, or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one (1) surface coal mining operation.

5. For the purposes of this paragraph a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing.

(d) The following facilities associated with an underground mining activity, if the facilities affect a minimal amount of land and if the facilities are actively used over extended periods of time:

1. Coal processing plants;
2. Support facilities; and
3. Roads.

(2) Application requirements. If land within the proposed permit area is identified as prime farmland under 405 KAR 8:030, Section 21 or 405 KAR 8:040, Section 21, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(a) A soil survey of the permit area conducted by the SCS according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (SCS) and 18 "Soil Survey Manual" (SCS) as incorporated by reference in 405 KAR 7:015. The SCS establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. The National Soils Handbook is available for review at area and state SCS offices.

1. The soil survey shall include a soils map, a description of each soil mapping unit, and profile descriptions of each soil using representative descriptions from the soil survey area as determined by the SCS including, but not limited to, soil-horizon depths, textures, pH values, and consistence for each prime farmland soil unit within the permit area.

2. In addition to the representative soil profile description provided by the SCS, the applicant may submit site-specific soil profile descriptions of the permit area prime farmland soil mapping units. These descriptions shall be prepared by persons meeting the qualification requirements of the SCS prime farmland specifications incorporated by reference in 405 KAR 20:040. These descriptions must meet NCSS standards and shall include the name, address and qualifications of the soil scientist that prepared them. If such on-site descriptions are not obtained and included in the application, then the representative soil profile descriptions provided by the SCS shall be deemed by the cabinet as representative of the soils in the permit area and the soil-horizon depths and other data therein shall serve as a basis for determining whether reclaimed prime farmland areas have been restored to proper depth and meet other reconstruction standards of 405 KAR 20:040, Section 4.

3. Bulk density of the prime farmland soils prior to mining shall be documented and included in the application. These densities shall be obtained either by testing samples from each soil mapping unit by ten (10) inch soil layers or by using estimates provided for each soil series by the SCS.

4. The cabinet may require the applicant to provide information on other physical and chemical soil properties as needed to make a determination that the applicant has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 405 KAR 20:040.

(b) A detailed plan for soil removal, storage, and reconstruction which demonstrates that the applicant has the technological capability to comply with 405 KAR 20:040. The plan shall include at a minimum:

1. The proposed methods and types of equipment to be used for soil removal, storage, and reconstruction, including equipment

operation patterns, use of ripping and chiseling, stockpile locations and erosion control measures, etc.

2. A description of measures to be taken to avoid excessive compaction of soils.

3. A description of measures to be taken to ensure that soil removal, handling, and reconstruction operations shall be conducted within soil moisture ranges that will minimize compaction.

4. A description of any soil amendments to be applied.

5. Maps, plans, and cross-sections depicting the location and acreages of reconstructed prime farmland soil mapping units, final grading configuration, drainage and erosion control measures.

6. Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes according to the requirements of 405 KAR 20:040, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area. The demonstration for soil substitutes or mixtures shall include analyses performed by a qualified soil scientist and such analyses of physical and chemical parameters of the original soils and the substitute soil materials or soil mixtures as required by the cabinet (which shall be conducted by a qualified laboratory).

(c) A plan for revegetation, crop production and demonstration of restoration of soil productivity in conformance with 405 KAR 20:040, Section 5. The cabinet may allow detailed cropping plans, including items such as identification of reference crops, locations of test plots, and yield measurement methodologies, to be submitted after issuance of the permit, as a revision to the permit, provided that the permit is conditioned to require submission of the detailed plan at least one (1) year prior to initiation of crop production on the reclaimed area for the purpose of demonstration of compliance with 405 KAR 20:040. The initial revegetation plan, however, must be included in the application before the permit is issued. Permits issued prior to February 4, 1986 shall be revised to comply with this paragraph at least one (1) year prior to initiation of crop production on the reclaimed area for the purpose of demonstration of compliance with 405 KAR 20:040.

(3) Cabinet consultation with the SCS.

(a) Before any permit is issued for areas that include prime farmlands, the cabinet shall consult with the state conservationist, SCS.

(b) The state conservationist shall provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (2) of this section. If the state conservationist considers those methods to be inadequate, he or she shall suggest revisions to the cabinet resulting in more complete and adequate reconstruction.

(4) Criteria for approval. A permit for the mining and reclamation of prime farmland may be granted by the cabinet, if it first finds, in writing, upon the basis of a complete application, that:

(a) The approved proposed postmining land use of these prime farmlands will be cropland;

(b) The permit incorporates as specific conditions the contents of the plan submitted under subsection (2) of this section, after consideration of any revisions to that plan suggested by the state conservationist under subsection (3) of this section;

(c) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(d) The proposed operations will be conducted in compliance with the requirements of 405 KAR 20:040 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of 405 KAR Chapters 7 through 24.

Section 4. Mountaintop Removal Mining. (1) Applicability. This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(2) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam

or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 405 KAR 20:050, Section 1(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

(3) Criteria for approval. The cabinet may issue a permit for mountaintop removal mining, without regard to the requirements of 405 KAR 16:190 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(a) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use.

(b) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the cabinet to constitute an equal or better economic or public use of the affected land compared with the premining use.

(c) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

1. Compatible with adjacent land uses;
2. Obtainable according to data regarding expected need and market;
3. Assured of investment in necessary public facilities;
4. Supported by commitments from public agencies where appropriate;
5. Practicable with respect to private financial capability for completion of the proposed use;
6. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and
7. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(d) The proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs.

(e) The cabinet has provided, in writing, an opportunity of not more than sixty (60) days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any state or federal agency which the cabinet, in its discretion, determines to have an interest in the proposed use.

(f) The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 405 KAR 16:190, the operation will be conducted in compliance with the requirements of 405 KAR 20:050;

(g) The requirements of 405 KAR 20:050 are made a specific condition of the permit;

(h) All other requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24 are met by the proposed operations;

(i) The permit is clearly identified as being for mountaintop removal mining.

(4) Periodic review.

(a) Any permits issued under this section shall be reviewed by the cabinet to evaluate the progress and development of mining activities to establish that the permittee is proceeding in accordance with the terms of the permit:

1. Within the sixth month preceding the third year from the date of its issuance;
2. Before each permit renewal; and
3. Not later than the middle of each permit term.

(b) Any review required under paragraph (a) of this subsection need not be held if the permittee has demonstrated and the cabinet finds, in writing, within three (3) months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(5) Modifications of permit. The terms and conditions of a permit for mountaintop removal mining may be modified at any

time by the cabinet, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 5. Steep Slope Mining. (1) This section applies to any persons who conduct or intend to conduct steep slope surface coal mining and reclamation operations, except:

(a) Where an applicant proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(b) Where a person obtains a permit under the provisions of Section 4 of this administrative regulation; or

(c) To the extent that a person obtains a permit incorporating a variance under Section 6 of this administrative regulation.

(2) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

(3) No permit shall be issued for any operations covered by this section, unless the cabinet finds, in writing, that in addition to meeting all other requirements of this chapter, the operation will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

Section 6. Variances from Approximate Original Contour Restoration Requirements for Nonmountaintop Removal, Steep Slope Mining. (1) The cabinet may issue a permit for nonmountaintop removal, steep slope mining which includes a variance from the requirements of 405 KAR 16:190, 18:190 and 20:060, Section 2(3) to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the cabinet finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the requirements of 405 KAR 20:060, Section 3 are met.

(2) If a variance is granted under this section:

(a) A statement shall be listed on the permit making the requirements of 405 KAR 20:060, Section 3 a specific condition.

(b) The permit shall be specifically marked as containing a variance from approximate original contour.

(3) Periodic review.

(a) Any permits incorporating a variance issued under this section shall be reviewed by the cabinet at least every thirty (30) months following the issuance of the permit to evaluate the progress and development of the mining activities, to establish that the permittee is proceeding in accordance with the terms of the variance.

(b) If the permittee demonstrates to the cabinet that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, the review required in paragraph (a) of this subsection need not be held.

(4) Modifications of permit. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the cabinet, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 7. Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Operations. (1) Applicability.

(a) This section applies to any permittee or permittees who conduct or intend to conduct combined surface mining activities and underground mining activities where compliance with the time frames for reclamation as specified in 405 KAR 16:020, Section 2, is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operations for the surface mining activities can be completed.

(b) This section provides only for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(2) Application requirements. Any applicant who desires to obtain a variance under this section shall file with the cabinet complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans which:

(a) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(b) Show how multiple future disturbances of surface lands or waters will be avoided;

(c) Identify the specific surface areas for which a variance is sought and the particular sections of KRS Chapter 350 and 405 KAR Chapters 7 through 24 from which a variance is being sought;

(d) Show how the activities will comply with 405 KAR 16:010, Section 3 and other applicable requirements of 405 KAR Chapters 7 through 24;

(e) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(f) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(g) Show how temporary off-site storage of spoil will be conducted to comply with the requirements of KRS Chapter 350 and 405 KAR 18:190, Section 6.

(3) Criteria for approval. A permit incorporating a variance under this section may be issued by the cabinet if it first finds, in writing, upon the basis of a complete application filed in accordance with this section that:

(a) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(b) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resources and will avoid multiple future disturbances of surface land or waters;

(c) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of 405 KAR Chapters 7 through 24 and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(d) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(e) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by KRS Chapter 350 and 405 KAR 16:020;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 405 KAR 16:010, Section 3 and other applicable requirements of KAR Title 405;

(g) Temporary off-site storage of spoil will comply with the requirements of KRS Chapter 350 and 405 KAR 18:190, Section 6;

(h) Liability under the performance bond required to be filed by the applicant with the cabinet pursuant to 405 KAR Chapter 10 will be for the duration of the underground mining activities and until all requirements of 405 KAR Chapter 10 have been complied with; and

(i) The permit for the surface mining activities contains specific conditions:

1. Specifying the particular surface areas for which a variance is authorized; and

2. Providing a detailed schedule for reclamation in lieu of requirements of the time frames specified in 405 KAR 16:020, Section 2.

(4) Periodic review. Variances granted under permits issued

under this section shall be reviewed by the cabinet no later than three (3) years from the dates of issuance of the permit and any permit renewals.

Section 8. Coal Processing Plants Not Located Within the Permit Area of a Specified Mine. (1) Applicability. This section applies to any person who operates or intends to operate coal processing plants not within a permit area of a specific mine, other than such plants which are located at the site of ultimate coal use.

(2) Permit required. Any person who operates or intends to construct or operate such a coal processing plant shall obtain a permit from the cabinet under 405 KAR Chapters 7 through 24.

(3) Previously exempted operations. This subsection applies only to those coal processing plants subject to 405 KAR 20:070, Section 5.

(a) On or before February 1, 1986, all persons operating a coal processing plant who intend to operate after August 1, 1986 shall file an initially complete (as defined in 405 KAR 8:010, Section 13(1)(a)) permit application under 405 KAR Chapters 7 through 24. No person may operate a coal processing plant after August 1, 1986 unless that operation is being conducted under a permit issued under 405 KAR Chapters 7 through 24, except that a person may continue to operate a coal processing plant after August 1, 1986 without a permit if:

1. An initially complete permit application has been timely filed. "Timely filed" shall mean filed on or before February 1, 1986, or if filed within that time but determined to be initially incomplete, resubmitted within fifteen (15) calendar days of being served notice by the cabinet that the application is initially incomplete. Such notice shall be served in accordance with 405 KAR 7:092, Section 5.

2. The cabinet has yet to issue or deny the permit; and

3. The person complies with the performance standards of 405 KAR 20:070.

(b) The applicant shall file a performance bond under 405 KAR Chapter 10 within sixty (60) calendar days of being served notice of the decision by the cabinet to issue the permit. Such notice shall be served in accordance with 405 KAR 7:092, Section 5. If the performance bond is not filed within that time the cabinet shall deny the permit application.

(c) Any time limits for cabinet action specified in 405 KAR 8:010 shall not apply to permit applications filed under this subsection; provided, however, the cabinet shall make every effort to timely review and issue or deny such permit applications prior to August 1, 1986.

(4) Application.

(a) Any application for a permit for operations covered by this section shall be in accordance with 405 KAR 8:030 and, as applicable, 405 KAR 8:050 and shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and drawings of the construction, operation, maintenance, reclamation and removal of the coal processing plants. The plan shall demonstrate that those operations will be conducted in compliance with 405 KAR 20:070.

(b) For permit applications for operations subject to subsection (3) of this section, the requirements of 405 KAR 8:030, Section 21, and 405 KAR 8:050, Section 3, shall not apply to lands disturbed by the coal processing plants prior to December 1, 1985.

(c) Permit applications for operations subject to subsection (3) of this section, which were timely filed in accordance with subsection (3)(a)1 of this section, need not contain the information required under 405 KAR 8:030, Sections 12, 13, 14(3), and 15(4). Any such applicant failing to make a timely filing shall be required to submit this information.

(5) Criteria for approval. No permit shall be issued for any operation covered by this section unless the cabinet finds, in writing, that, in addition to meeting all other applicable requirements of this chapter, the operations will be conducted in compliance with the requirements of 405 KAR 20:070.

Section 9. Underground Only Permits. (1) Applicability. This section applies to any person who conducts or intends to conduct an underground only operation, which does not have a surface

disturbance.

(2) Application requirements. Any application for a permit for operations covered by this section shall be made according to all requirements of 405 KAR Chapter 8 applicable to underground mining activities.

(3) Criteria for approval. No permit shall be issued for operations covered by this section unless the cabinet first finds, in writing, upon the basis of a complete application made in accordance with subsection (2) of this section that the operation will be conducted in compliance with all requirements of this chapter relating to underground mining activities, and 405 KAR 20:090 and 405 KAR 18:060, 18:070, 18:110, and 18:210.

(4) Bonding. Permits with an underground only area in the commonwealth shall comply with the bonding requirements of 405 KAR Chapter 10.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth permit application requirements for special mining categories including mining on prime farmland, augering, in situ processes, off-site coal preparation plants mountain top removal mining, steep slope mining and underground only mining.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide permit requirements and program standards for special categories of mining.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 360(12) directs the cabinet to promulgate administrative regulations for permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations. This administrative regulation establishes requirements for granting a permit for underground only coal mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes permitting requirements and program standards for special categories of mining.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to clarify the intent of the administrative regulation as it pertains to underground only permits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing permitting requirements and program standards for special categories of mining.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.093, 350.151, 350.450, 350.465, 30 C.F. R. Parts 730. 773-775, 777, 778.17.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Parts 730, 773-775, 777, 778.17

2. State Compliance Standards. KRS 350.028, KRS 350.060

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for acquiring an underground permit.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation defines certain essential terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "Acquisition" means the purchase, lease, or option on the land for the purpose of conducting or allowing through resale, lease, or option the action of conducting surface coal mining and reclamation operations.

(2) "Active Acre" means an acre of land or fraction thereof, permitted and bonded for surface disturbance pursuant to a surface coal mining permit as of July 1, 2013. Active acre does not include:

(a) Acreage contained in a permit for which the entire permit has not been initially disturbed by the permittee after permit issuance;

(b) Acreage contained in a permit, or increment thereof, that has completed initial reclamation and received a minimum of a Phase 1 bond release; or

(c) Undisturbed acreage completely released from liability as a result of a bond release or bond reduction; or

~~(d) Acreage of a permit that is permitted and bonded for underground acreage only.~~

(3) "Actuarial soundness" is defined by KRS 350.500(1).

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Cabinet" is defined in KRS 350.010(10).

(8) "C.F.R." means Code of Federal Regulations.

(9) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(10) "Coal mined and sold" means coal severed or removed as a result of surface coal mining operations and subsequently sold, transferred, or used by the permittee or operator.

(11) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(12) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(13) "Day" means calendar day unless otherwise specified to be a working day.

(14) "Department" means the Department for Natural Resources.

(15) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by

405 KAR Chapter 10 is released.

(16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(f).

(17) "FDIC" means Federal Deposit Insurance Corporation.

(18) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(19) "Final disposition" means the status of an enforcement action taken by the cabinet pursuant to KRS Chapter 350 for which a final secretary's order has been entered and the time for appeal has expired or all appeals have been exhausted, or an agreed order has been entered.

(20) "FSLIC" means Federal Savings and Loan Insurance Corporation.

(21) "Full-cost bonding" means performance bonds that have been submitted by a permittee for its surface coal mining operation permits in lieu of participation and membership in the Kentucky Reclamation Guaranty Fund.

(22) "Historically used for cropland" means land that:

(a) Has been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting surface coal mining and reclamation operations;

(b) Would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; or

(c) The cabinet determines, on the basis of additional cropland history of the surrounding land and the land under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(23) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(24) "KRGF" means the Kentucky Reclamation Guaranty Fund.

(25) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(26) "Member" means a permittee in the Kentucky Reclamation Guaranty Fund.

(27) "Non-production fee" means the annual fee established in KRS 350.518(2)(e).

(28) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(29) "Operations" is defined in KRS 350.010(6).

(30) "Operator" is defined in KRS 350.010(7).

(31) "Opt-out" means the decision by a permittee to not participate in the KRGF and to provide full-cost bonding pursuant to 405 KAR 10:080, Section 2(1)(a)1.

(32) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any

condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(33) "ORGF" means the Office of the Reclamation Guaranty Fund.

(34) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships established in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations; and

(b) One (1) of the following relationships, which shall be presumed to constitute ownership or control unless a person demonstrates that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(35) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070, KRS 350.595, and 350.500 – 350.521), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(36) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(37) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~[the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit]~~.

(38) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(39) "Person" is defined in KRS 350.010(9).

(40) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal

exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(41) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(42) "Reclamation" is defined in KRS 350.010(12).

(43) "Secretary" is defined in KRS 350.010(11).

(44) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(45) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(46) "Surface coal mining and reclamation operations" is defined in KRS 350.010(3).

(47) "Surface coal mining operations" is defined in KRS 350.010(1).

(48) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(49) "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(50) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(51) "U.S. EPA" means United States Environmental Protection Agency.

(52) "Voluntary Bond Pool" is defined by KRS 350.500(5).

(53) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 10

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to

be used in 405 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 10 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and KRS 35.060

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(Amendment)

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

RELATES TO: KRS Chapter 350, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter

350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 12.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(3) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(4) "Cabinet" is defined in KRS 350.010.

(5) "C.F.R." means Code of Federal Regulations.

(6) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(7) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(8) "Day" means calendar day unless otherwise specified to be a working day.

(9) "Department" means the Department for Natural Resources.

(10) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(11) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation

of a permit or other requirements of KRS Chapter 350, in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(12) "KAR" means Kentucky administrative regulations.

(13) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(14) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(15) "Operations" is defined in KRS 350.010.

(16) "Operator" is defined in KRS 350.010.

(17) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(18) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(19) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(20) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~.

(21) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(22) "Person" is defined in KRS 350.010.

(23) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected

by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(24) "Reclamation" is defined in KRS 350.010.

(25) "Secretary" is defined in KRS 350.010.

(26) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(27) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(28) "Surface coal mining operations" is defined in KRS 350.010.

(29) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(30) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in

405 KAR Chapter 12.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 12.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 12.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 12 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 12.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same

requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 701.5

2. State Compliance Standards. KRS 350.028 and 350.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 16:001. Definitions for 405 KAR Chapter 16.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917c, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS

350.028(1), (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 16.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery

systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(13) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(14) "Cabinet" is defined in KRS 350.010.

(15) "C.F.R." means Code of Federal Regulations.

(16) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(18) "Coal mine waste" means coal processing waste and underground development waste.

(19) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(20) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(21) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(24) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(25) "Day" means calendar day unless otherwise specified to be a working day.

(26) "dB" means decibels.

(27) "Department" means the Department for Natural Resources.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Durable rock" means rock that:

(a) Does not slake in water;

(b) Is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair, or restrict the effectiveness of the internal drainage system; and

(c) Has been demonstrated to have a slake durability index value of ninety (90) or greater as determined by:

1. The "Method of Determination of Slake Durability Index (Kentucky Method 64-513-79)"; or

2. A test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(33) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(34) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(37) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(38) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(39) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(40) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(41) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(42) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the

hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(43) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(44) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(45) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(46) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration.

(47) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) "Hz" means hertz.

(49) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350, in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(50) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(51) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.

(52) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(53) "In situ process" means:

(a) In situ gasification;

(b) In situ leaching;

(c) Slurry mining;

(d) Solution mining;

(e) Borehole mining;

(f) Fluid recovery mining; or

(g) Another activity conducted on the surface or underground in connection with:

1. In-place distillation;

2. Retorting;

3. Leaching; or

4. Chemical or physical processing of coal.

(54) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from

both surface runoff and groundwater discharge.

(55) "KAR" means Kentucky administrative regulations.

(56) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(57) "KRS" means Kentucky Revised Statutes.

(58) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(59) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(60) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(61) "MRP" means mining and reclamation plan.

(62) "MSHA" means Mine Safety and Health Administration.

(63) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(64) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(65) "Operations" is defined in KRS 350.010.

(66) "Operator" is defined in KRS 350.010.

(67) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(68) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(69) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 16:070.

(70) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(71) "Overburden" is defined in KRS 350.010.

(72) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(73) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does

not include "intermittent stream" or "ephemeral stream."

(74) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(75) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(76) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(77) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~.

(78) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(79) "Person" is defined in KRS 350.010.

(80) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(81) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(82) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(83) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(84) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(85) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(86) "RAM" means Reclamation Advisory Memorandum.

(87) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(88) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(89) "Reclamation" is defined in KRS 350.010.

(90) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(91) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative

ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(92) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(93) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(94) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(95) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(96) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(97) "SCS" means Soil Conservation Service.

(98) "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

(99) "Shadow area" means the surface area overlying underground mine works and surface disturbances associated with auger and in situ mining.

(100) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or
2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(101)[(100)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(102)[(101)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(103)[(102)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(104)[(103)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are

differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(105)[(104)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(106)[(105)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(107)[(106)] "Steep slope" means any slope of more than twenty (20) degrees.

(108)[(107)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(109)[(108)] "Surface blasting operations":

(a) Means the on-site storage, transportation, and use of explosives in association with:

1. A coal exploration operation;
2. Surface mining activities; or
3. A surface disturbance of underground mining activities; and

(b) Includes the following activities:

1. Design of an individual blast;
2. Implementation of a blast design;
3. Initiation of a blast;
4. Monitoring of an airblast and ground vibration; and
5. Use of access control, warning and all-clear signals, and similar protective measures.

(110)[(109)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(111)[(110)] "Surface coal mining operations" is defined in KRS 350.010.

(112)[(111)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(113)[(112)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(114)[(113)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(115)[(114)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(116)[(115)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(117)[(116)] "Toxic-forming materials" means earth materials or

wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(118)[(147)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(119)[(148)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(120)[(149)] "TRM" means Technical Reclamation Memorandum.

(121)[(120)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(122)[(124)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(123)[(122)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(124)[(123)] "U.S. EPA" means United States Environmental Protection Agency.

(125)[(124)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(126)[(125)] "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(127)[(126)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(128)[(127)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(129)[(128)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth

and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.[Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials, is incorporated by reference;

(b) "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79", (1979), Kentucky Department of Transportation.

(2) It may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 16

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 16.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 16.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 16 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation.

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 16.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028 (1), (5), 350.465, 30 C.F.R. Parts 707.5, 730-733, 735, 917, 30 U.S.C. 1253, 1255.

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 amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 701.5

2. State Compliance Standards. KRS 350.028 and 350.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 16:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.420, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements. (1) Surface and groundwater monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located groundwater monitoring wells (or springs), surface water monitoring stations, and quantity and quality parameters to demonstrate that:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area, shadow area, and adjacent area pursuant to 405 KAR 16:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 16:060, Section 1(3);

(c) Reclamation as required by 405 KAR is being accomplished and the operation is preventing material damage to

the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation, pursuant to 405 KAR 16:060, Section 8, has not proximately resulted in the contamination, diminution, or interruption of a ground or surface water supply which is used for domestic, agricultural, industrial or other beneficial purpose; and

(e) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and groundwater monitoring shall be coordinated with baseline data collection by conducting surface and groundwater monitoring at locations where baseline data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of baseline conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and groundwater quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 16:060, Section 7.

(4) Except as provided under subsection (7) of this section:

(a) Surface and groundwater monitoring data collection shall begin during the calendar quarter of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and groundwater monitoring data shall be collected once each calendar quarter, with no two (2) samples collected closer than thirty (30) days apart. The results of the quarterly data collection must be submitted to the appropriate regional office on or before the end of the first month following the calendar quarter in which the data were collected.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional groundwater monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

(7)(a) Pursuant to an application for a revision of a permit, the cabinet may approve reduction of the sampling frequency for surface or groundwater, except as required by the KPDES permit, if the permittee demonstrates to the cabinet's satisfaction, using the monitoring data obtained under this administrative regulation, that the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support the postmining land uses; and the water rights of other users have been protected or replaced.

(b) However, the cabinet shall not approve reduction of sampling frequency to less than quarterly until at least thirty (30) months after Phase I bond release on the permit. The cabinet shall not approve a sampling frequency of less than once per year.

Section 2. Groundwater Monitoring. (1) Groundwater monitoring shall be conducted according to the requirements of Section 1 of this administrative regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, groundwater monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) If the applicant can demonstrate to the satisfaction of the cabinet by use of the baseline geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance

anywhere within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this administrative regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 C.F.R. Parts 122, 123 and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and groundwater monitoring requirements of this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity and groundwater quality and quantity and aquifer conditions, and requirement for duration of such monitoring.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for monitoring and reporting of surface water quality and quantity and groundwater quality and quantity and aquifer conditions, and requirement for duration of such monitoring.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation establishes the requirements of monitoring and reporting of surface water quality and quantity and groundwater quality and quantity and aquifer

conditions, and requirement for duration of such monitoring.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides requirements of monitoring and reporting of surface water quality and quantity and groundwater quality and quantity and aquifer conditions, and requirement for duration of such monitoring.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requirements of monitoring and reporting of surface water quality and quantity and groundwater quality and quantity and aquifer conditions, and requirement for duration of such monitoring.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.420, 350.465.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 817.35 and 817.36

2. State Compliance Standards. KRS 350.028 350.060.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for monitoring surface and groundwater related to underground mines.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 18:001. Definitions for 405 KAR Chapter 18.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 18. This administrative

regulation differs from federal regulations by including the definition of "angle of draw". This definition is necessary to determine areas subject to subsidence requirements and to comply with the intent of federal regulations.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Angle of draw" means the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of a subsidence trough.

(7) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(9) "Approximate original contour" is defined in KRS 350.010.

(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface

and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(13) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(14) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(15) "Cabinet" is defined in KRS 350.010.

(16) "C.F.R." means Code of Federal Regulations.

(17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or

2. Other community group;

(b) As a facility for the following purposes:

1. Educational;

2. Cultural;
3. Historic;
4. Religious;
5. Scientific; or
6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service.

(25) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(27) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(28) "Day" means calendar day unless otherwise specified to be a working day.

(29) "dB" means decibels.

(30) "Department" means the Department for Natural Resources.

(31) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(33) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(35) "Durable rock" means rock that:

(a) Does not slake in water;

(b) Is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair, or restrict the effectiveness of the internal drainage system; and

(c) Has been demonstrated to have an slake durability index value of ninety (90) or greater as determined by:

1. The "Method of Determination of Slake Durability Index (Kentucky Method 64-513-79)"; or

2. A test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(36) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(37) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(38) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(39) "Fish and wildlife land use", as used in 405 KAR 16:210

and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(40) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(41) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(42) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(43) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(44) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(45) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(46) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(47) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(48) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(49) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration.

(50) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(51) "Hz" means hertz.

(52) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(53) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.

(54) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(55) "In situ process" means:

- (a) In situ gasification;
- (b) In situ leaching;
- (c) Slurry mining;
- (d) Solution mining;
- (e) Borehole mining;
- (f) Fluid recovery mining; or
- (g) Another activity conducted on the surface or underground in connection with:
 - 1. In-place distillation;
 - 2. Retorting;
 - 3. Leaching; or
 - 4. Chemical or physical processing of coal.

(56) "Intermittent stream" means:

- (a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or
- (b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(57) "KAR" means Kentucky administrative regulations.

(58) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(59) "KRS" means Kentucky Revised Statutes.

(60) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(61) "Material damage", as used in 405 KAR 18:210 means:

- (a) Any functional impairment of surface lands, features, structures or facilities;
- (b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
- (c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(62) "Modified highwall" means either:

- (a) The highwall resulting from remining where the preexisting highwall face is removed; or
- (b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(63) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(64) "MRP" means mining and reclamation plan.

(65) "MSHA" means Mine Safety and Health Administration.

(66) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(67) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(68) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26 and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial

purposes is excluded.

(69) "Operations" is defined in KRS 350.010.

(70) "Operator" is defined in KRS 350.010.

(71) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(72) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

- (a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

- (b) To comply with 405 KAR 18:070.

(73) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) "Overburden" is defined in KRS 350.010.

(75) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(76) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(79) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~.

(81) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(82) "Person" is defined in KRS 350.010.

(83) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(84) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(85) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(86) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(87) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(88) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(89) "RAM" means Reclamation Advisory Memorandum.

(90) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(91) "Reclamation" is defined in KRS 350.010.

(92) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(93) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(94) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(95) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(96) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(97) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(98) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(99) "SCS" means Soil Conservation Service.

(100) "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

(101) "Shadow area" means the surface area overlying underground mine works and surface disturbances associated with auger and in situ mining.

(102) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(103)[(402)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(104)[(403)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(105)[(404)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(106)[(405)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(107)[(406)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(108)[(407)] "Steep slope" means any slope of more than twenty (20) degrees.

(109)[(408)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(110)[(409)] "Surface blasting operations":

(a) Means the on-site storage, transportation, and use of explosives in association with:

1. A coal exploration operation;
2. Surface mining activities; or
3. A surface disturbance of underground mining activities;

(b) Includes the following activities:

1. Design of an individual blast;
2. Implementation of a blast design;
3. Initiation of a blast;
4. Monitoring of an airblast and ground vibration; and
5. Use of access control, warning and all-clear signals, and similar protective measures.

(111)[(410)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(112)[(411)] "Surface coal mining operations" is defined in KRS 350.010.

(113)[(412)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(114)[(413)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(115)[(414)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved

by the cabinet to remain after reclamation as part of the approved postmining land use.

(116)[(145)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(117)[(146)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(118)[(147)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(119)[(148)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(120)[(149)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(121)[(120)] "TRM" means Technical Reclamation Memorandum.

(122)[(124)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(123)[(122)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(124)[(123)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(125)[(124)] "U.S. EPA" means United States Environmental Protection Agency.

(126)[(125)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(127)[(126)] "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(128)[(127)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(129) [(128)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(130)[(129)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or

groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.
[Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials;

(b) "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79", (1979), Kentucky Department of Transportation.

(2) It may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 18

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 18.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 18.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 18 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative

regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulations in Chapter 18.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 18.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.060, 350.465, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and KRS 350.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 18:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.410, 350.440, 350.465, 30 C.F.R. Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS[Chapter 13A,] 350.020, 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation contains general performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, permanent abandonment of operations, and protection against the sudden release of water accumulated in underground workings to the land surface.

Section 1. Applicability. The provisions of this chapter are applicable to all underground mining activities including coal processing plants, conducted under 405 KAR Chapters 7 through 24. The provisions of this chapter also apply to those special categories of underground mining activities for which performance standards are set forth under 405 KAR 20:020 through 405 KAR 20:080, except to the extent that a provision of those administrative regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal operations is minimized.

Section 3. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the permittee shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 4. Permanent Abandonment of Operations. (1) Notice required. On or before the date of permanent abandonment of operations, the permittee shall provide written notice to the cabinet that permanent abandonment is intended.

(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the administrative regulations of 405 KAR, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of the equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 5. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 18:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 18:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 6. Protection Against Sudden Release of Water Accumulated in Underground Workings to the Land Surface. (1) Except where surface openings are approved in the permit, an unmined barrier of coal shall be left where the underground workings dip toward and approach the land surface. The cabinet shall waive this requirement if it determines that the proposed operation meets all other applicable requirements of 405 KAR Chapters 7-24 and KRS Chapter 350 and also meets either paragraph (a) or (b) of this subsection:

(a) The applicant has demonstrated in the permit application to the satisfaction of the cabinet, based upon the geologic and hydrologic conditions in the permit area and shadow area, that accumulation of water in the underground workings cannot reasonably be expected to occur; or

(b) Adequate measures to prevent accumulation of water in the

underground workings have been included in the permit application and have been approved by the cabinet.

(2) If an unmined barrier of coal is required under subsection (1) of this section, it shall be of sufficient width to prevent failure and sudden release of water accumulated in underground workings to the land surface.

(a) The cabinet may determine on a case-by-case basis the width of the unmined barrier of coal that shall be required to comply with this subsection.

(b) The width of the unmined barrier of coal shall not be less than the width given by the following formula: $W = 50 + H$, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the unmined barrier of coal. The cabinet shall approve, for the purpose of protecting against the sudden release of water accumulated in underground workings to the land surface, a width less than the minimum width determined by this formula if the applicant has demonstrated in the permit application to the satisfaction of the cabinet that the lesser width will achieve the purpose of this subsection.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains general performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, permanent abandonment of operations, and protection against the sudden release of water accumulated in underground workings to the land surface.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, permanent abandonment of operations, and protection against the sudden release of water accumulated in underground workings to the land surface.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation provides general information related to performance standards, landslides, temporary cessations, abandonment of operations, and protection against the sudden release of water accumulated in underground workings to the land surface.

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

administrative regulation provides information related to performance standards, landslides, temporary cessations, abandonment of operations, and protection against the sudden release of water accumulated in underground workings to the land surface. This administrative regulation provides the regulated entity the necessary information to address these issues.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendments accomplish this by clarifying that permit applications should continue to include shadow area information when providing information related to sudden releases of water accumulated in underground workings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify how the amendments related to the passage of HB 234 would be addressed regarding sudden releases of water accumulated in underground workings to the land surface.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine or have underground acreage will be

required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 U.S.C. 1253, 1255, and 1266

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.59, 817.99, and 817.131

2. State Compliance Standards. KRS 350.090, 351.151, and KRS 35.060.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for coal recovery, slides, and temporary cessation orders as these topics relate to underground mines.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 18:040. Casing and sealing of underground openings.

RELATES TO: KRS 350.151, 350.420, 350.465

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and

administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth requirements for temporary and permanent casing, sealing or other management of drill holes, boreholes, shafts, wells, or other exposed underground openings.

Section 1. General Requirements. Each exploration hole, other drill hole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the cabinet, as necessary to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area, shadow area, and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining activities within the permit area or shadow area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the cabinet. Use of a drilled hole or monitoring well as a water well must meet the provisions of 405 KAR 18:060, Section 6. This section does not apply to holes drilled and used for blasting, in the area affected by surface operations.

Section 2. Temporary. (1) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(2) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

Section 3. Permanent. When no longer needed for monitoring or other use approved by the cabinet upon a finding of no adverse effects, or unless approved for transfer as a water well under 405 KAR 18:060, Section 6, each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the cabinet in accordance with Section 1 of this administrative regulation and 405 KAR 18:060, Section 5 and consistent with 30 C.F.R. 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for temporary and permanent casing, sealing or other management of drill holes, boreholes, shafts, wells, or other exposed underground openings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to requirements for temporary and permanent casing, sealing or other management of drill holes, boreholes, shafts, wells, or other exposed underground openings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to establish performance standards for protection of people and property, land, water and other natural resources, during underground mining activities. This administrative regulation provides for the protection of the public and natural resources from possible impacts of underground coal mining.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary information to regulated entities to set in place the appropriate measures to protect the public from possible impacts from underground coal mining.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendments accomplish this by clarifying that permit applications should continue to include shadow area information related to the management of drill holes, boreholes, shafts, wells, or other exposed underground openings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify how the amendments related to the passage of HB 234 would be addressed regarding the management of drill holes, boreholes, shafts, wells, or other exposed underground openings.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program which includes establishing performance standards for protection of people and property, land, water and other natural resources, during underground mining activities. This amendment provides information related the inclusion of shadow area as part of the required information related to openings to underground works.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine or have underground acreage will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.060, 350.151, and 350.465.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current

expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. 817.14, and 817.15.

2. State Compliance Standards. KRS 350.090, 351.151, and KRS 350.060.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for casing and sealing openings to underground mines on a temporary basis (30 C.F.R. 817.14) and permanently (30 C.F.R. 817.15).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 18:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.421, 350.440, 350.465, 30 C.F.R. Parts 701.5, 730-733, 735, 817.41, 817.45, 817.47, 817.56, 817.57, 917, 30 U.S.C. 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS 350.028, 350.100, 350.151, 350.420, 350.465, 30 C.F.R. Parts 730-733, 735, 817.41, 817.45, 817.47, 817.56, 917, 30 U.S.C. 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and the replacement of water supplies for underground mines. This administrative regulation differs from federal regulations as follows: KRS 350.421(2) requires replacement of water supplies for domestic, agricultural, industrial, or other legitimate use. The federal regulation, 30 C.F.R. 817.41(j), requires replacement of water for drinking, domestic, or residential uses. Section 12(1) follows the state requirement. Section 12(2)(a) of this administrative regulation, regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 C.F.R. 817.41(j) but are included in the definition of "replacement of water supply" at 30 C.F.R. 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations and are needed for fair and consistent enforcement of the requirement to promptly replace domestic water supplies. Section 12(2)(e) of this administrative regulation, regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995 and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs. Section 12(4)(b) of this administrative regulation, regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 C.F.R. 817.41(j) or the

federal subsidence regulation at 30 C.F.R. 817.121(c)(5), but the federal bonding regulation at 30 C.F.R. 800.14(c) provides that the permittee's financial responsibility for repairing material damage resulting from subsidence under 30 C.F.R. 817.121(c) may be satisfied by the liability insurance policy required under 30 C.F.R. 800.60. Section 12(4)(c) of this administrative regulation, regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. This administrative regulation is consistent with the purpose of the federal regulations because the bond cannot be released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee.

Section 1. General Requirements. (1) All underground mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance in ~~in both~~ the permit area, shadow area, and adjacent areas, in order to:

- (a) Prevent material damage to the hydrologic balance outside the permit area;
- (b) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this administrative regulation.
- (2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.
- (3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.
- (4) Operations shall be conducted to minimize water pollution and, if necessary, treatment methods shall be used to control water pollution.
- (a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.
- (b) Acceptable practices to control and minimize water pollution include:
 - 1. Stabilizing disturbed areas through land shaping;
 - 2. Diverting run-off;
 - 3. Achieving quickly germinating and growing stands of temporary vegetation;
 - 4. Regulating channel velocity of water;
 - 5. Lining drainage channels with rock or vegetation;
 - 6. Mulching;
 - 7. Selectively placing and sealing acid-forming and toxic-forming materials;
 - 8. Designing mines to prevent or control gravity drainage of acid waters;
 - 9. Sealing;
 - 10. Controlling subsidence;
 - 11. Preventing acid mine drainage; and
 - 12. Implementing sediment control measures in Section 2 of this administrative regulation.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

- (a) Prevent, to the extent possible, additional contributions of sediment to stream flow or to run off outside the permit area;
- (b) Meet the requirements of 405 KAR 18:070, Section 1(1)(g); and
- (c) Minimize erosion to the extent possible.
- (2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include:
 - (a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 18:200,

Section 1(2);

- (b) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off, in accordance with the requirements of 405 KAR 18:190;
- (c) Retaining sediment within disturbed areas;
- (d) Diverting run-off away from disturbed areas;
- (e) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;
- (f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment;
- (g) Treating with chemicals;
- (h) Treating mine drainage in underground sumps; and
- (i) Using sedimentation ponds as required in 405 KAR 18:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, if necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Acid drainage and toxic drainage shall be avoided by:

- (1) Identifying, burying, and treating, in accordance with 405 KAR 18:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and treated;
- (2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter; and
- (3) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within thirty (30) days after they are first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of these materials may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Groundwater Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and groundwater quality shall be protected by handling earth materials and run-off in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and the following:

- (1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and run-off in a manner that:
 - (a) Minimizes the formation of acidic or toxic drainage;
 - (b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area; and
 - (c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.
- (2) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 405 KAR 18:070, the operator shall use and maintain the necessary water-treatment facilities or water quality controls for as long as treatment is required under this chapter; and
- (3) Surface water quantity and flow rates shall be protected by

handling earth materials and run-off in accordance with the steps outlined in the plan approved under 405 KAR 8:040, Section 32(1) and (2).

Section 7. Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 405 KAR 18:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 18:040.

Section 8. Gravity Discharges from Underground Mines. Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. (1) Gravity discharges of water from an underground mine, other than a drift mine subject to subsection (2) of this section, may be allowed by the cabinet if it is demonstrated that the untreated or treated discharge complies with the performance standards of this chapter and any additional KPDES permit requirements.

(2) Notwithstanding anything to the contrary in subsection (1) of this section, the surface entries and accesses of drift mines first used after May 18, 1982 and located in acid-producing or iron-producing coal seams shall be located in a manner as to prevent any gravity discharge from the mine.

Section 9. Discharges Into an Underground Mine. (1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will:

(a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(b) Not result in a violation of applicable water quality standards or effluent limitations;

(c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 18:070 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the cabinet; and

(d) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(a) Coal processing waste;

(b) Underground mine development waste;

(c) Fly ash from a coal-fired facility;

(d) Sludge from an acid mine drainage treatment facility;

(e) Flue gas desulfurization sludge;

(f) Inert materials used for stabilizing underground mines; and

(g) Water.

(3) Water from one (1) underground mine may be diverted into other underground workings according to the requirements of this section and as approved in the permit.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by underground mining activities unless the cabinet specifically authorizes underground mining activities closer to, or through the stream. The cabinet may authorize this activity only upon finding, as a result of evaluating a permit application, that:

(a) Underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards;

(b) Underground mining activities will not cause significant detrimental effects on the water quantity or quality of the intermittent or perennial stream; however, this paragraph shall not apply to any reach of that stream that is upstream of an impounding structure located within the permit area and within the stream channel;

(c) Underground mining activities will not cause significant detrimental effects on other valuable environmental resources, as determined by the cabinet, of the stream; and

(d) If there will be a temporary or permanent stream-channel diversion, it shall comply with 405 KAR 18:080.

(2) The area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application, and shall be marked by the permittee as specified in 405 KAR 18:030.

(3) Descriptions, drawings, data, and all other information required by the cabinet to make the findings of subsection (1) of this section shall be submitted in a permit application in a manner prescribed by the cabinet.

(4)(a) The provisions of the amendments to this section shall apply to all underground mining activities, except as provided in paragraph (b) of this subsection.

(b)1. Underground mining activities included in a permit issued on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

2. Underground mining activities included in a permit application determined to be complete pursuant to 405 KAR 8:010, Section 13(1) on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

Section 12. Replacement of Water Supply. (1)(a) If the cabinet receives a citizen's complaint under 405 KAR 12:030 that the person's water supply has been adversely impacted by the activities of a permittee named in the complaint, the cabinet shall promptly notify the permittee of the complaint.

(b) The permittee or operator shall promptly replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, if the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the underground mining activities conducted after July 16, 1994. Baseline geologic and hydrologic information required in 405 KAR 8:040, Sections 12 through 16, and other relevant information available to the cabinet, shall be used to determine the impact of mining activities upon the water supply.

(2) If replacement of a water supply is required under subsection (1) of this section the permittee shall:

(a) If the water supply to be replaced is a domestic supply, provide water supply on both a temporary and permanent basis in accordance with this paragraph;

1. Within forty-eight (48) hours after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide a temporary water supply connected to the existing plumbing, if any, that provides water for all ordinary household purposes including drinking, cooking, bathing, sanitation, and laundry, and drinking water for poultry, livestock, and domestic animals, and water for noncommercial domestic agricultural and horticultural activities;

3. Within two (2) years after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide a satisfactory permanent water supply;

(b) If the water supply to be replaced is other than a domestic supply, provide water supply on both a temporary and permanent basis on a schedule established by the cabinet on a case-by-case basis;

(c) Provide water supply equivalent to premining quantity and quality;

(d) Provide an equivalent water delivery system; and

(e) Pay operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest. Upon agreement by the permittee and the owner of interest, the obligation to pay the excess operation and maintenance costs may be satisfied by:

1. A one (1) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest;

2. A uniform series of payments whose present worth equals or exceeds the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest; or

3. Other reasonable compensation arrangements which fairly compensate the owner for the future operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest.

(3) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence shall be obtained from the owner of interest.

(4)(a) If contamination, diminution, or interruption to a water supply protected under subsection (1) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost to replace the protected water supply, until the replacement is completed. If replacement is completed within ninety (90) days of the occurrence, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but shall not exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete the replacement within ninety (90) days.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4 covers the replacement, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the replacement. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required replacement.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,

300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and the replacement of water supplies for underground mines.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and the replacement of water supplies for underground mines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation provides information related to the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and the replacement of water supplies for underground mines.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information related to the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and the replacement of water supplies for underground mines.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendments accomplish this by clarifying that underground mining activities should be planned and conducted to minimize disturbance of the hydrologic balance and should include shadow area in these considerations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify how the amendments related to the passage of HB 234 would be addressed regarding the inclusion of shadow area in the plans to minimize disturbance of the hydrologic balance.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This amendment conforms to the authorizing statutes by providing information to the regulated entity clarifying that shadow area should still be included when planning to minimize disturbance of the hydrologic balance.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. This administrative regulation provides the regulated entity the necessary information to address these issues as it relates to shadow area.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could

add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings. The entities will continue to be required to minimize disturbances to the hydrologic balance in the shadow area.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments. This is a continuation of the requirement. The passage of HB 234 required shadow area to no longer be permitted. However, the entity will still be required to minimize disturbances to the hydrologic balance in the shadow area. Therefore, there will be no cost increase associated with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers. However, there will be no additional benefits associated with these amendments.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine or have underground acreage will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.100, 350.151, 350.420, 350.465, 30 C.F.R. Parts 730-733, 735, 817.41, 817.45, 817.47, 817.56, 917, 30 U.S.C. 1253, 1255, 1266, and 1309a

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 amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.41 and 817.45.

2. State Compliance Standards. KRS 350.420 and 350.421.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for protection of the hydrologic balance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works. The previous existing language in the administrative regulation different from the federal requirements as listed in the Necessity, Function, and Conformity.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation complies with state authorizing statute (KRS 350.421) on water replacement, which differs from federal requirements. However, this administrative regulation is consistent with the purpose of the federal regulations because the bond cannot be released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 18:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,

STATUTORY AUTHORITY: KRS [Chapter 43A,] 350.028, 350.151, 350.420, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements. (1) Surface and groundwater monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located groundwater monitoring wells (or springs), surface water monitoring stations, and quantity and quality parameters to demonstrate whether:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area, shadow area, and adjacent area pursuant to 405 KAR 18:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 18:060, Section 1(3);

(c) Reclamation as required by 405 KAR is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and groundwater monitoring shall be coordinated with baseline data collection by conducting surface and groundwater monitoring at locations where baseline data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of baseline conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and groundwater quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 18:060, Section 6.

(4) Except as provided under subsection (7) of this section:

(a) Surface and groundwater monitoring data collection shall begin during the calendar quarter of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and groundwater monitoring data shall be collected once each calendar quarter, with no two (2) samples collected closer than thirty (30) days apart. The results of the quarterly data collection must be submitted to the appropriate regional office on or before the end of the first month following the calendar quarter in which the data were collected.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional groundwater monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

(7)(a) Pursuant to an application for a revision of a permit, the cabinet may approve reduction of the sampling frequency for surface or groundwater, except as required by the KPDES permit, if the permittee demonstrates to the cabinet's satisfaction, using the monitoring data obtained under this administrative regulation, that the operation has minimized disturbance to the hydrologic balance in the permit area, shadow area, and adjacent areas and prevented material damage to the hydrologic balance outside the permit area, and water quantity and quality are suitable to support the postmining land uses.

(b) However, the cabinet shall not approve reduction of sampling frequency to less than quarterly until at least thirty (30) months after Phase I bond release on the permit. The cabinet shall not approve a sampling frequency of less than once per year.

Section 2. Groundwater Monitoring. (1) Groundwater monitoring shall be conducted according to the requirements of Section 1 of this administrative regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, groundwater monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) If the applicant can demonstrate to the satisfaction of the

cabinet by use of the baseline geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance anywhere within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this administrative regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 C.F.R. Parts 122, 123, and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and groundwater monitoring requirements of this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for the monitoring and reporting of surface water quality, quantity, groundwater levels, quality, aquifer conditions, and the required duration of such monitoring.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to the monitoring and reporting of surface water quality, quantity, groundwater levels, quality, aquifer conditions, and the required duration of such monitoring.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation provides information related to the monitoring and reporting of surface water quality, quantity, groundwater levels, quality, aquifer conditions, and the required duration of such monitoring.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information related to the monitoring and reporting of surface water quality, quantity, groundwater levels, quality, aquifer conditions, and the required duration of such monitoring.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendments accomplish this by clarifying that permit applications should continue to include shadow area information when providing information related to sudden releases of water accumulated in underground workings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify how the amendments related to the passage of HB 234 would be addressed regarding sudden releases of water accumulated in underground workings to the land surface.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. This administrative regulation provides the regulated entity the necessary information to address hydrologic balance as it relates to shadow area.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine or have underground acreage will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.151, 350.420, 350.465

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.41

2. State Compliance Standards. KRS 350.420

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for monitoring surface and groundwater monitoring.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amendment)

405 KAR 18:260. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.028, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth general requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities.

Section 1. Other Transportation Facilities. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transport facilities within the permit area shall be designed, constructed, and maintained, and the area restored to:

(1) Prevent, to the extent possible using the best technology currently available:

(a) Damage to fish, wildlife and related environmental values; and

(b) Additional contributions of suspended solids to stream flow or run off outside the permit area. Any such contribution shall not be in excess of limitations of state or federal law.

(2) Control and minimize diminution or degradation of water quality and quantity;

(3) Control and minimize erosion and siltation;

(4) Control and minimize air pollution; and

(5) Prevent damage to public or private property.

Section 2. Support Facilities and Utility Installations. (1) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal-loading facilities at or near the mine site, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed, maintained, and used in a manner which prevents, to the extent possible, using the best technology currently available:

(a) Damage to fish, wildlife, and related environmental values; and

(b) Additional contributions of suspended solids to stream flow and run off outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(2) All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area or shadow area, unless otherwise approved by the owner of those facilities and the cabinet.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth general requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation provides requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities. This administrative regulation provides the regulated entity the necessary information to address these issues.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendments accomplish this by clarifying that permit applications should continue to include shadow area information when "minimizing damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify how the amendments related to the passage of HB 234 would be addressed regarding damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This amendment conforms to the authorizing statutes by clarifying that shadow area should be included by the regulated entity as it relates to damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines.

(d) How the amendment will assist in the effective

administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine or have underground acreage will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465

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 amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.180, and 817.181

2. State Compliance Standards. KRS 350.028, 350.465

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for support facilities and utility installations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 20:001. Definitions for 405 KAR Chapter 20.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS [Chapter 350, 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 20.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed

area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(12) "Cabinet" is defined in KRS 350.010.

(13) "C.F.R." means Code of Federal Regulations.

(14) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) "Coal mine waste" means coal processing waste and underground development waste.

(17) "Coal processing plant" means a facility where coal is

subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(18) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(19) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(21) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(22) "Day" means calendar day unless otherwise specified to be a working day.

(23) "Department" means the Department for Natural Resources.

(24) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(26) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(27) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(28) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(29) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(30) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(31) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(32) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(33) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(34) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(35) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(36) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(37) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(38) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(39) "KAR" means Kentucky administrative regulations.

(40) "KRS" means Kentucky Revised Statutes.

(41) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(42) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(43) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(47) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(48) "Overburden" is defined in KRS 350.010.

(49) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream".

(50) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of

KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(51) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(52) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

(55) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(56) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(57) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(58) "RAM" means Reclamation Advisory Memorandum.

(59) "Reclamation" is defined in KRS 350.010.

(60) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(61) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(62) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(63) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(64) "SCS" means Soil Conservation Service.

(65) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(66) "Shadow area" means the surface area overlying underground mine works and surface disturbances associated with auger and in situ mining.

(67) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(68) [(67)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(69) [(68)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(70) [(69)] "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(71) [(70)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(72) [(71)] "Steep slope" means any slope of more than twenty (20) degrees.

(73) [(72)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(74) [(73)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(75) [(74)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(76) [(75)] "Surface coal mining operations" is defined in KRS 350.010.

(77) [(76)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(78) [(77)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(79) [(78)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(80) [(79)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(81) [(80)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(82) [(81)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(83) [(82)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(84) [(83)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(85) [(84)] "U.S. EPA" means United States Environmental Protection Agency.

(86) [(85)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 20.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 20.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the

commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 20.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 20 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulations in Chapter 20.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 20.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and KRS 35.060

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of 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. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 20:080. In situ processing.

RELATES TO: KRS 350.010, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards for all surface coal mining and reclamation operations. This administrative regulation sets forth certain performance standards for in situ processing activities.

Section 1. Performance Standards. (1) The permittee who conducts in situ processing activities shall comply with 405 KAR

Chapter 18 and this section.

(2) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(a) Avoiding discharge of fluids into holes or wells, other than as approved by the cabinet;

(b) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the cabinet;

(c) Avoiding annular injection between the wall of the drill hole and the casing; and

(d) Preventing discharge of process fluid into surface waters.

(3) Each permittee who conducts in situ processing activities shall submit for approval as part of the application for permit under 405 KAR 8:050, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(4) Each permittee who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(a) Horizontally beyond the affected area identified in the permit; and

(b) Vertically into overlying or underlying aquifers.

(5) Each permittee who conducts in situ processing activities shall restore the quality of affected groundwater in the permit area and adjacent area, including groundwater above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the groundwater is not diminished.

Section 2. Monitoring. (1) Each permittee who conducts in situ processing activities shall monitor the quality and quantity of surface and groundwater and the subsurface flow and storage characteristics, in a manner approved by the cabinet under 405 KAR 18:110, to measure changes in the quantity and quality of water in surface and groundwater systems in the permit area, shadow area, and in adjacent areas.

(2) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the cabinet as necessary according to appropriate federal and state air and water quality standards.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth certain performance standards for in situ processing activities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to performance standards for in situ processing activities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation provides information related to performance standards for in situ processing activities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information related to information related to performance standards for in situ processing activities. This administrative regulation provides the regulated entity the necessary information to address these issues.

(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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendments accomplish this by clarifying that the regulated entity should include shadow area when considering performance standards related to in situ processing activities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify how the amendments related to the passage of HB 234 would be addressed regarding in situ processing activities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. The amendments conform to the authorizing statutes by clarifying how the regulated entity should include shadow area when considering performance standards related to in situ processing activities.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings. However, the entity will be required to include shadow area when monitoring groundwater systems related to in situ mining.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments. Entities conducting in situ mining activities will be required to include shadow area when monitoring groundwater systems related to in situ mining. This is not a new requirement and will not result in a cost increase.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers. However, the amendments will not benefit to the

specific amendments in this administrative regulation. Entities conducting in situ mining activities will be required to include shadow area when monitoring groundwater systems related to in situ mining.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine or have underground acreage will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.151, 350.465

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 828.

2. State Compliance Standards. KRS 350.028, 350.151, 350.465

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the performance

standards for in situ processing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

JUSTICE CABINET (Amendment)

500 KAR 8:010. Certification of breath alcohol analysis instrument operators.

RELATES TO: KRS 15A.070, 189A.103(3), (6)

STATUTORY AUTHORITY: KRS 15A.160, 189A.103(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet. KRS 189A.103(3)(b) directs the secretary, or his or her designee, to issue certification for operation of breath alcohol analysis instruments to Kentucky peace officers. This administrative regulation establishes the certification of breath analysis operators as required by KRS 189A.103(3)(b).

Section 1. Training Program. (1) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the Basic Breath Test Operator Certification training program of the Department of Criminal Justice Training, or the Department of Kentucky State Police.

(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the Department of Criminal Justice Training, or the Department of Kentucky State Police, [department] and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor.

(3) The examinations shall be included in a minimum of twenty-four (24) hours of instruction, which shall include operation of approved instruments that measure alcohol concentration ~~forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration~~.

Section 2. Certification Period. (1) Breath test operator ~~Operator~~ certification shall be valid for a period of two (2) years from the date of issuance.

(2) Certification shall expire if the breath test operator does not obtain recertification ~~it is not renewed~~ within the two (2) year certification period.

(3) A breath test ~~An~~ operator whose certification has expired shall be eligible for recertification pursuant to Section 3 of this administrative regulation for a period of six (6) months following expiration.

(4) A breath test ~~An~~ operator whose certification expires during his or her service on active duty with the Kentucky National Guard or the United States Armed Forces shall be eligible for recertification pursuant to Section 3 of this administrative regulation for a period of six (6) months following his or her return to employment as a peace officer.

Section 3. Recertification. (1) To obtain recertification under Sections 2(2)-(4) ~~Section 2(3) or 2(4)~~ of this administrative regulation, a certified breath test operator, or a breath test operator whose certification has expired, shall review standards and procedures for a minimum of four (4) hours of recertification instruction by the Department of Criminal Justice Training, or the Department of Kentucky State Police.

Section 4. Repeating Training.~~[(2)] A breath test~~^[An] operator whose certification expires and fails to obtain recertification under Section 2(3) or 2(4) of this administrative regulation shall repeat the twenty-four (24) forty (40) hour Breath Test Operator Certification training program.

Section ~~5~~^[4]. Revocation of Certification. (1) The following are grounds for revocation of certification to operate a breath analysis instrument:

(a) Misuse of the instrument by the breath test operator in violation of law;

(b) Refusal or failure to perform procedures in an acceptable manner; and

(c) Failure to testify at any judicial proceeding under KRS Chapter 189A without just cause.

(2) Any revocation of a breath test^[an] operator's Breath Test Operator Certification shall be conducted by the Commissioner of the Department of Criminal Justice Training~~;~~ or his designee, or the Commissioner of the Department of Kentucky State Police or his designee, following written notice to the certified breath test operator of the basis for revocation and an administrative hearing conducted pursuant to KRS Chapter 13B. ~~[Section 5. (4) A person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, shall be exempt from the requirements of Section 1 of this administrative regulation.~~

~~(2) Each person who has not received this training more recently than January 1, 1989, shall comply with Section 3 of this administrative regulation.]~~

JOHN C. TILLEY, Secretary
MARK FILBURN, Commissioner

APPROVED BY AGENCY: July 18, 2017

FILED WITH LRC: July 27, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of September, 2017 at 9:30 a.m. at the Department of Kentucky State Police, Legal Services Branch, 919 Versailles Road, Frankfort, Kentucky. 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 30th day of September, 2017. 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: Graham Gray, Staff Attorney III, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-2163, fax (502) 696-1977, email graham.gray@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Graham Gray

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the provisions regarding the training required to obtain a breath test operator certification. In addition, this regulation establishes when certification expires, as well as the procedures for recertification, and revocation, of breath test operator certification. This regulation also adds authority for the Department of Kentucky State Police to provide certification training, examinations, recertifications, and revocations.

(b) The necessity of this administrative regulation: Update the provisions for breath test operator certification, recertification, and revocation, and remove the outdated grandfather clause exempting

certain persons from the requirements of this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the applicable procedures regarding breath test operator certification, recertification, and revocation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation updates the procedures regarding breath test operator certification, and adds authority for the Department of Kentucky State Police to provide training, examinations, recertifications, and revocations.

(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: Updates agency names, changes the minimum hours of instruction, and revises certification course content. In addition, this regulation adds authority for the Department of Kentucky State Police to provide training, examinations, recertifications, and revocations. Further, this amendment removes the outdated grandfather clause exempting certain persons from the requirements of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: To reflect changes in procedures, update agency names, change the minimum hours of instruction, and revise certification course content. In addition, this regulation adds authority for the Department of Kentucky State Police to provide training, examinations, recertifications, and revocations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation reflects the changes in the certification process, hours of instruction, and course content.

(d) How the amendment will assist in the effective administration of the statutes: The certification course content, hours of instruction, and certification process have been updated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Criminal Justice Training, the Department of Kentucky State Police, any person seeking to obtain breath test operator certification, and any law enforcement agency employing a certified breath test operator.

(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: A person seeking to obtain breath test operator certification will be required to successfully complete the minimum hours of instruction, revised course content, and examinations; a person seeking breath test operator certification, or recertification, shall comply with the updated procedures; and the Department of Criminal Justice Training and the Department of Kentucky State Police shall comply with the updated procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will not result in any cost to persons seeking to obtain breath test operator certification, or recertification, if that person is eligible for free training pursuant to 503 KAR 3:030. If the person seeking certification, or recertification, is ineligible for free training, the person shall pay the tuition set forth in 503 KAR 3:030. Compliance with this regulation shall result in minimal, if any, additional costs to the Department of Criminal Justice Training and the Department of Kentucky State Police.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The certification, recertification, and revocation process will be clarified and updated for persons seeking breath test operator certification, the Department of Criminal Justice Training, and the Department of Kentucky State Police.

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

(a) Initially: Minimal, if any costs, as the amendment grants the Department of Kentucky State Police discretion to provide training.

The Department of Kentucky State Police intends to purchase two "Intoxilyzer 8000" units, manufactured by CMI Inc., at a cost of approximately \$16,000.00 to provide this training, and will incur costs of approximately \$2,000.00 for additional training of Department of Kentucky State Police employees by the manufacturer of the equipment. Minimal, if any costs, for the Department of Criminal Justice Training.

(b) On a continuing basis: Minimal, if any, additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Service fees received by the Department of Kentucky State Police pursuant to KRS 189A.050, and grant funding if available, will be the source of funding for equipment purchases. Budgeted funds shall be utilized for training costs.

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

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

(9) TIERING: Is tiering applied?: No. The process is applied equally to all that receive the service.

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 Kentucky State Police, the Department of Criminal Justice Training, and any law enforcement agency employing a breath test operator.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070, KRS 15A.160, and KRS 189A.103.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department of Kentucky State Police intends to purchase two "Intoxilyzer 8000" units, manufactured by CMI Inc., at a cost of approximately \$16,000.00, and will incur costs of approximately \$2,000.00 for additional training of Department of Kentucky State Police employees by the manufacturer of the equipment. Service fees received by the Department of Kentucky State Police pursuant to KRS 189A.050, and grant funding if available, will be the source of funding for equipment purchases. Budgeted funds shall be utilized for training costs.

(d) How much will it cost to administer this program for subsequent years? Minimal, if any, additional costs.

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

Revenues (+/-): 0

Expenditures (+/-): \$18,000 (See response to 3(c) above).

Other Explanation: See (3)(a)-(d) for explanation.

JUSTICE CABINET (Amendment)

500 KAR 8:030. Administration of breath alcohol tests and chemical analysis tests.

RELATES TO: KRS 189A.103

STATUTORY AUTHORITY: KRS 15A.160, 189A.103

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.103(3)(a) requires the cabinet to promulgate administrative regulations establishing procedures for administering breath

alcohol tests and chemical analysis tests of blood and urine. This administrative regulation establishes procedures for administering those tests.

Section 1. The procedures established in this section shall apply to breath alcohol tests. (1) A certified breath test operator shall have ~~the person under personal observation at the location of the test for a minimum of~~ continuous control of the person by ~~present sense perception for at least~~ twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.

(2) A breath alcohol concentration test shall consist of the following steps in this sequence:

- (a) Ambient air analysis;
- (b) Alcohol simulator analysis;
- (c) Ambient air analysis;
- (d) Subject breath sample analysis; and
- (e) Ambient air analysis.

(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.02 alcohol concentration units.

Section 2. The procedures established in this section shall apply regarding chemical tests of blood for alcohol or other substances. (1) The blood sample shall be collected in the presence of a peace officer, or, at the direction of the officer, another person who can authenticate the sample.

(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).

(3) The blood sample shall be collected by the following method:

(a) Ethyl alcohol (ethanol) shall not be used to clean the skin where a blood sample is to be collected; and

(b) Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.

(4) Individual blood collecting containers shall be labeled to provide the following information:

(a) The name of the person from which the blood sample is collected;

(b) The date and time the blood sample is collected;

(c) The name of the person and agency collecting the blood sample;

(d) The name of the officer and agency requesting the collection of the blood sample; and

(e) The complete uniform citation number if available.

(5) The blood sample shall be delivered to a forensic laboratory branch of the Department of Kentucky State Police or other clinical laboratory as designated by the Department of Kentucky State Police.

Section 3. The procedures established in this section shall apply regarding chemical analysis of urine for substances of abuse or impairment including alcohol. (1) A urine sample shall be collected in the presence of a peace officer, or, at the direction of the officer, another person who can authenticate the sample. The witnessing person shall be of the same sex as the person providing the urine sample.

(2) The urine sample shall be collected from the subject person's voiding of his or her bladder. This urine sample may be tested for substances of abuse or impairment including alcohol.

(3) The urine sample shall be collected in a clean, dry container. Preservatives shall not be used.

(4) The urine sample container shall be labeled to provide the following information:

(a) The name of the person from whom the urine sample is collected;

(b) The date and time the urine sample is collected;

(c) The name of the person and agency collecting the urine sample;

(d) The name of the officer and agency requesting the collection of the urine sample; and

(e) The complete uniform citation number if available.

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(5) The urine sample shall be delivered to a forensic laboratory branch of the Department of Kentucky State Police or other clinical laboratory as designated by the Department of Kentucky State Police.

JOHN C. TILLEY, Secretary

APPROVED BY AGENCY: July 18, 2017

FILED WITH LRC: July 27, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of September, 2017 at 9:30 a.m. at the Department of Kentucky State Police, Legal Services Branch, 919 Versailles Road, Frankfort, Kentucky. 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 30th day of September, 2017. 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: Graham Gray, Staff Attorney III, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-2163, fax (502) 696-1977, email graham.gray@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Graham Gray

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the procedures for administering breath alcohol tests, and chemical analysis tests of blood and urine.

(b) The necessity of this administrative regulation: To establish the provisions regarding testing a person's breath, blood, or urine.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the applicable procedures regarding breath alcohol tests, and chemical analysis tests of blood and urine.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedure for a breath alcohol test, and sets forth the conditions under which the test is conducted. This regulation further establishes the procedure for testing a person's blood or urine.

(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: Updates agency names, and updates the procedures regarding breath alcohol tests.

(b) The necessity of the amendment to this administrative regulation: To more closely follow statutory standards for administering breath alcohol tests, and update agency names.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation more closely follows statutory standards for administering breath alcohol tests, and updates agency names.

(d) How the amendment will assist in the effective administration of the statutes: The regulatory standards and agency names have been updated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified operators of breath alcohol tests, the law enforcement agencies employing them, and those collecting blood and urine samples. In addition, those persons that are the subject of breath alcohol tests, or chemical analysis tests of blood and urine.

(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 procedure for administering breath alcohol tests is clarified by more closely following the statutory language.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certified operator of a breath alcohol test shall have the person under personal observation at the location of the test for a minimum of twenty (20) minutes prior to the breath alcohol analysis, as provided in 189A.103.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will not result in any cost to the certified operator of a breath alcohol test, and minimal if any additional costs to any law enforcement agencies employing a certified operator. If convicted of certain offenses, persons that are the subject of a breath alcohol tests, or chemical analysis tests of blood and urine, may be subject to statutorily authorized penalties.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The procedures will be clarified and updated for certified operators of breath alcohol tests, and any law enforcement agencies employing a certified operator.

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

(a) Initially: Minimal, if any, additional costs.

(b) On a continuing basis: Minimal, if any, additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budgeted funds.

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

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

(9) TIERING: Is tiering applied?: No. The process is applied equally to all that receive the service.

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? Any law enforcement agency that employs a certified operator of breath alcohol tests, or that conducts chemical analysis tests of blood and urine.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160 and KRS 189A.103

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

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

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

(c) How much will it cost to administer this program for the first year? Minimal, if any, additional costs.

(d) How much will it cost to administer this program for subsequent years? Minimal, if any, additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (3)(a)-(d) for explanation.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact" means that drills are run at Level 3, thud, or Level 4, live action.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed and without contact.

(5) "Level 1" or "bags" means that a drill is run against a bag or another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at the assigned speed until the moment of contact; one (1) player is predetermined the winner by the coach; contact remains above the waist; and players stay on their feet.

(7) "Level 3" or "thud" means that a drill is run at the assigned speed through the moment of contact; there is not a predetermined winner; contact remains above the waist; players stay on their feet; and a quick whistle ends the drill.

(8) "Level 4" or "live action" means that a drill is run in game-like conditions and is the only time that players are taken to the ground.

(9) "Non-contact" means that drills are run at Level 0, air; Level 1, bags; or Level 2, control.

(10) "OCR" means Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action

brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; and

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; and

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items clearly indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school based decision making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(f)2.;

(b) Meet the requirements of KRS 160.380(4) and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. Initial certification shall use in-person instruction and certification shall be updated as required by the approving agency;

(3) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use the KHSAA form PPE;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, air, or Level 1, bags;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular season contest; and

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season and post season games:

a. The pitch count is based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base do not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat will be allowed to finish that hitter;

d. The required calendar rest begins on the day following the date on which the game began or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods required:

(i) Maximum pitches – eighty-five (85);

(ii) Fifty-six (56) pitches or more – three (3) calendar days rest;

(iii) Thirty-six (36) - fifty-five (55) – two (2) calendar days rest;

(iv) Twenty (20) - thirty-five (35) – one (1) calendar day rest; and

(v) One (1) - nineteen (19) – no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7.[Beginning with the 2017-2018 school year,] Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require any student enrolled initially in grade five (5) through eight (8) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level~~[involving students enrolled in grades six (6) through eight (8)];~~

(9) Require that any student who turns:

(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age prior to August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in

grades six (6) and below;

(10) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(11) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(12) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(13) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(14) ~~Beginning in June 2017,~~ The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 6. Incorporation by Reference. (1) The following material

is incorporated by reference:

(a) "KHSAA Constitution", 6/2017[6/2013];

(b) "KHSAA Bylaws", 6/2017[9/2016];

(c) "KHSAA Due Process Procedure", 6/2017[6/2014];

(d) "KHSAA Board of Control and Officials Division Policies", 6/2017[6/2016];

(e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;

(f) KHSAA Form GE01, "Application for ~~Renewal~~—of Membership", 5/2017[5/2015];

~~[(g) KHSAA Form GE02, "Application for New Membership", 6/2017 5/2015;]~~

~~[(g)][(h)] KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 4/2015;~~

~~[(h)][(i)] KHSAA Form DP06[GE06], "Application for Athletic Eligibility for Domestic Students[Transfer Form— Citizens of the U.S. or U.S. Territories]", 8/2017[9/2016];~~

~~[(i)][(j)] KHSAA Form DP07[GE07], "Application for Athletic Eligibility for Students having J-1 or F-1 Status[Foreign Exchange Student (Non-Domestic) Eligibility]", 8/2017[6/2016];~~

~~[(j)][(k)] KHSAA Form DP08[GE08], "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status [Foreign Student, Non-Exchange (Non-Domestic) Eligibility]", 8/2017 [6/2016];~~

~~[(k)][(l)] "KHSAA Form GE14- Contract for Athletic Contests", 8/2017[4/2014];~~

~~[(l)][(m)] KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2", 6/2016;~~

~~[(m)][(n)] "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;~~

~~[(n)][(o)] KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;~~

~~[(o)][(p)] KHSAA Form GE35, "Request for Waiver of 20 Day Notice", 4/2014;~~

~~[(p)][(q)] "KHSAA Form GE36- Add. Info for Appeal", 6/2016;~~

~~[(q)][(r)] "KHSAA Form GE69- Waiver – 15 Day Exceptions", 6/2016;~~

~~[(r)][(s)] KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 4/2015;~~

~~[(s)][(t)] KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 4/2015;~~

~~and~~
~~[(t)][(u)] "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 4/2015.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services~~[Office of Legal and Legislative Services]~~, Department of Education, 5th Floor, 300 Sower Blvd~~[First Floor, Capital Plaza Tower]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2017, at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Office of Guiding Support Services, Kentucky Department of Education, 300 Sower Blvd., Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected schools and districts.

(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: These amendments make changes to the documents incorporated by reference, including the constitution to clarify the basis upon when a director may be removed, how a director may be excused from attendance at required meetings, and the eligibility to be elected as a director. Changes were also made to the transfer bylaws that prevent member schools from improperly and unduly influencing students to transfer to their school for athletic reasons. Additional changes were made to require a student be financially current at school regarding financial aid. Finally, changes were made to the bylaws that allow schools to play non-member schools from other states, allow students to attend additional college exposure events, and allow for more participation opportunities at the non-varsity level under certain circumstances. These changes were all adopted by the KHSAA Delegate Assembly. Additional changes to other materials were made to incorporate these aforementioned changes in the bylaws.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools.

The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, Due Process Procedure, and Board of Control Policies to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a more sound structure of governance.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 School Districts

(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: There will be little impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel, however the training required to meet these requirements will be provided at no costs to the schools or the coaching personnel.

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

(a) Initially: Minimal

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from the various state championships.

(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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, the Department of Education, and the Kentucky High School Athletic Association.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7:065.

(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 additional expense to the school districts or the department as a result of this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent years are minimal.

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 COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Governor's Commission on Fire Protection
Personnel Standards and Education
(Amendment)

739 KAR 2:050. Volunteer fire department aid.

RELATES TO: KRS 75.400, 75.410, 75.440, 95A.210, 95A.262, 136.392

STATUTORY AUTHORITY: KRS 95A.262(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95.262(2) requires the Commission on Fire Protection Personnel Standards and Education to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation establishes the requirements for volunteer fire department aid.

Section 1. Definitions. [(1)] "Certified training" means firefighter training given or verified by an instructor certified pursuant to 739 KAR 2:060 and recorded by the commission.

(2) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training and who receives at least twenty (20) hours of certified training annually.

(3) "Commission" is defined by KRS 95A.210(1).

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, with a minimum rated pump capacity of 750 gallons per minute (gpm), and which met or meets the associated National Fire Protection Association (NFPA) standard at the time of manufacture [equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry fire hose and other fire suppression equipment].

(5) "Newly formed fire department" means a fire department which meets the requirements established in KRS 95A.262(2) for a qualifying department.

(6) "Volunteer fire department" is defined in KRS 75.400(5)].

Section 2. Eligibility. (1) To qualify ~~for to receive volunteer fire department aid~~, a volunteer fire department shall meet the requirements established in KRS 95A.262 and submit to the commission proof of the required annual twenty (20) hours of recognized training for each firefighter by December 31 [this administrative regulation].

(2) ~~Even if all volunteer firefighters have not yet become certified volunteer firefighters, as defined by 739 KAR 2:060, a new fire department shall be eligible for aid if the fire department has:~~

~~(a) Been recognized by the commission;~~

~~(b) Been established for less than two (2) years;~~

~~(c) A staff consisting of at least fifty (50) percent certified volunteer firefighters; and~~

~~(d) Twelve (12) or more firefighters and a chief that have not qualified another fire department for volunteer department aid [A newly formed fire department applying to be recognized by the commission for funding and benefits shall have twelve (12) firefighters and a chief that are not qualifying another fire department for volunteer fire department aid.~~

~~(3) A fire department or other eligible entity requesting aid shall provide proof of purchase expenditures for the previous year's aid. The proof shall be submitted by June 30 of each year on form KSA-2, Proof of Purchase.~~

~~(4) Certification of personnel shall be determined from Form KFS-2, Firefighter Application, which shall be submitted to the commission regarding the active or inactive status of an existing member, the departure of a member, or the entry of a new member].~~

Section 3. Applying for Aid. [Participation Requirement. (1)] The chief officer or ~~the~~ [his] appointed representative of the department shall submit a Volunteer Fire Department State-Aid Application, [furnish the information required by the commission for determination of eligibility.

(2) All training hours for the department for the previous twelve

(12) months shall be submitted by December 31.

(3) A volunteer fire department seeking aid pursuant to KRS 95A.262 shall submit to the commission a completed:

(a) Form KSA-1, Fire Department Information; and

(b) Form KFS-3, Fire Department Application.]

Section 4. Eligible Items and Report of Purchase. (1) Funds may be used to purchase items such as firefighting and special operations equipment, fire apparatus or a fire station. Funds may also be used for the maintenance or repair of a fire station. [Purposes for which Volunteer Aid May be Used. (1) An approved equipment list of items which may be purchased with volunteer fire department aid pursuant to KRS 95A.262 and this administrative regulation shall be supplied with each check.]

(2)(a) Funds shall not be expended for ineligible items unless the commission staff receives a written request from the chief explaining the need for the items and the request is approved by the commission staff, in accordance with subsection 4 of this section.

(b) If the request is denied and the volunteer department does not desire to use the funds for approved items, the allotment shall be refunded to the commission staff [an item not on the approved list unless written permission to spend the funds for other purposes is granted by the commission and fire department aid administrator pursuant to Section 5 of this administrative regulation].

(3) Each fire department receiving aid shall submit the State-Aid Report of Purchase form to the commission staff by July 31 of the following year the aid was granted. Failure to do so shall disqualify the department from receiving aid the following year.

(a) [Proof of purchase shall be:

(a) Submitted in the form of an invoice and cancelled check;

(b) Recorded on Form KSA-2, Proof of Purchase; and

(c) Submitted to the commission.

(4) Proof of purchase documentation shall be returned by June 30 of the year following receipt of the check.

(5) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment.

(b) The inspection may include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Holding of Funds. [Processing Applications for and Expenditure of Aid. (1)(a) If the approved allotment is insufficient to cover the cost of equipment or other approved purpose, the full aid [funds] granted for a fiscal year may be held by the fire department [deposited in a bank authorized by the applicant to be held] for a period not to exceed five (5) years from the initial granting of funds [request].

(b) If the funds will be held [additional time beyond the five (5) years is needed], a written explanation for the holding request shall be submitted [made] to the commission upon receiving the funds [giving reasons why additional time is needed].

(c) The funds shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(2)(a) Upon the expenditure of funds, [If an allotment is granted to a fire department and is to be used for the purchase of equipment other than that listed on the approved equipment list or for another purpose,] the chief or appointed representative shall submit the Purchase Report to the commission. [of the fire department shall:

(a) Request, in writing, permission to use the allotment for other equipment or purposes; or

(b) Refund the grant-in-aid allotment.

(3) The amount expended for a firefighter to attend a fire-related school or class shall:

(a) Not exceed ten (10) percent of the aid amount allotted for that fire department; and

(b) Be listed on Form KSA-2, Proof of Purchase, with receipts.

(4) If expenditure is made of an allotted fund, copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission.]

(b) If the funds are [grant is to be] used toward the retirement of a preexisting debt for purchase of land, buildings or equipment,

proof of the expenditure in the form of an affidavit or cancelled note shall be ~~submitted~~[furnished] to the commission.

~~(c) An applicant who knowingly makes a false statement regarding volunteer fire department aid shall subject the grant to refund and prosecution for fraud[A false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes].~~

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

(a)[Fire Department Information, Form KSA-1, July 14, 1998;

(b) Firefighter Application, Form KFS-2, July 14, 1998;

(c)] Volunteer Fire Department State-Aid Application 8/2017[Form KFS-3, July 14, 1998]; and

(b)](d)] State-Aid Report[Proof] of Purchase, 8/2017[Form KSA-2, July 14, 1998].

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Lexington, Kentucky 40505, [1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40604,] Monday through Friday, 8 a.m. to 4:30 p.m.

RONNIE DAY, Executive Director

APPROVED BY AGENCY: July 26, 2017

FILED WITH LRC: August 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 10:00 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. 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 through September 30, 2017. 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: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480, email aevans@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and process for volunteer fire departments to receive state aid from the Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform requirements for volunteer fire departments to receive state aid distributed by the Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the Commission's delegated authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation states the specifies the requirements to receive Commission 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 amendment will require the full aid amount be spent or the full amount be held in a separate account. The amendment will limit the extensions to spend the aid to five years.

The amendment also reduces the amount of paperwork the fire departments are required to submit with the application.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary so the aid can be better accounted for by the Commission and the fire departments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the requirements for state aid.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow for easier accounting of funds used by fire departments and reduce the documents fire departments are required to include in the application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 725 volunteer fire departments eligible for state aid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require volunteer fire departments that have held state aid funds beyond five years to use or return the aid to the Commission.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that the state aid application process will be simplified.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Commission funds.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 95A.262, 95A.210, 75.410, 75.440

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.

RELATES TO: KRS 156.808[154B.035], Chapter 337, 29 C.F.R. 825, 29 U.S.C. 201-219

STATUTORY AUTHORITY: KRS 156.808[154B.035](3)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808[154B.035] requires the Kentucky Board of Education~~[Executive Director for the Office of Career and Technical Education]~~ to promulgate comprehensive administrative regulations consistent with the provisions of KRS 156.808[154B.035]. KRS 156.808[154B.035](3)(g) specifies that the Kentucky Board of Education~~[executive director]~~ shall promulgate ~~[comprehensive]~~ administrative regulations for the certified and equivalent staff of state-operated area technology centers governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence. The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq., as implemented by 29 C.F.R. Part 825, requires the granting of family and medical leave. This administrative regulation establishes those leave requirements.

Section 1. Attendance. (1) A full-time employee shall be required to work thirty-seven and one-half (37 1/2) hours per week for any positions unless otherwise specified by the appointing authority.

(2) The normal work day for a school-based employee shall coincide with the appropriate school schedule as recommended by the principal and approved by the associate commissioner for career and technical education~~[executive director]~~.

(3) The associate commissioner for career and technical education~~[executive director]~~ may require an employee to work hours and work days other than the normal schedule including an inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works within a ~~[school or]~~ division which requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. An employee shall be given as much advance notice as possible when schedules are changed.

(5) The employee shall give reasonable notice in advance of absence from a work station.

(6) An employee may~~[shall]~~ be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee, except teachers and principals, deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of the regular work schedule. Teachers and principals shall not accumulate compensatory time.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 200 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under Section 3(2)(f) of this administrative regulation, and shall otherwise allow the use of compensatory leave if it shall not unduly disrupt the operations of the agency.

(b) If an eligible employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of 200 compensatory hours.

(c) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

(d) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off when school is not in session~~[during the following times:~~

1. ~~Spring break; or~~

2. ~~Christmas break, except on the four (4) official holidays normally given to state employees].~~

(e) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

Section 3. Annual and Personal Leave. (1) Accrual of annual leave.

(a) Each full-time employee, except school-based teachers and principals, shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 day per month
60-119 months	1 1/4 days per month
120-179 months	1 1/2 days per month
180-239 months	1 3/4 days per month
240 months & over	2 days per month

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Annual leave shall be accumulated only in the months in which the employee is hired to work. ~~[A teacher employed to teach ten and one-half (10 1/2) months shall accrue leave during the actual school term, unless he is approved to work and actually works extended employment.]~~

(d) Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half hours (22.5) of personal leave at the beginning of each school year. Any unused personal leave in accordance with this section shall be

converted to sick leave at the end of each school year.

(e)[(d)] Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(f)[(e)] In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(g)[(f)] An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for annual months of service prior to retirement.

(h)[(g)] A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for prior annual months of service.

(i)[(h)] An employee dismissed for cause who has been reinstated to state service shall receive credit for annual months of service prior to dismissal, except if the dismissal resulted from a violation of KRS 156.838[154B.090].

(j)[(i)] Part-time, temporary, or seasonal employees shall not be entitled to annual leave.

(2) Use and retention of annual and personal leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours. Teachers and principals shall use personal leave in half-day (3.75 hour) increments.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under Section 3(2)(f) of this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(f) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(g) Leave in excess of the maximum amounts specified in paragraph (f) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement, whichever comes first.

(h) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(e) of this section.

(3) Annual and personal leave on separation.

(a) An employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual leave not to exceed the amounts established by subsection (2)(f) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance. A teacher or principal who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated personal leave not to exceed twenty-two and one-half hours (22.5).

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual and/or personal leave. Payment for personal leave shall not exceed twenty-two and one-half hours (22.5).

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent

service the next workday shall retain accumulated annual leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual or personal leave.

(e) Upon the death of an employee, the estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual and/or personal leave. Payment for personal leave shall not exceed twenty-two and one-half hours (22.5).

(f) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by subsection (2)(f) of this section be waived, if:

1. The employee resigns, or is laid off because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 4. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except teachers, principals, and a part-time employees, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee, except teachers and principals, shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee, except teachers and principals, shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) Beginning in the 2018-2019 school year, teachers and principals shall be credited with seventy-five (75) hours of sick leave at the beginning of each school year.

(e)[(d)] A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(f)[(e)] A full-time employee who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(g)[(f)] In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(h)[(g)] The total service shall be verified before the leave is credited to the employee's record.

(i)[(h)] An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(j)[(i)] A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(k)[(j)] An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except if the dismissal resulted from a violation of KRS 156.838[154B.090].

(l)[(k)] Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) The appointing authority or his designee shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the

employee's need to care for a family member;

4. Would jeopardize the health of himself or others at the work station because of a contagious disease or demonstration of behavior that might endanger the employee or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, or, if granted by the appointing authority, another relative of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(d) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(e) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) The appointing authority or his designee shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, compensatory and sick leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority or his designee shall notify the employee in writing of the leave without pay status.

(c) The appointing authority or his designee may require a periodic doctor's statement during the year attesting to the employee's continued inability to perform essential functions of his duties with or without reasonable accommodation.

(d) The appointing authority or his designee may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority or his designee shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority or his designee in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority or his designee for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority or his designee in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may

be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or the designee. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) The appointing authority or his designee may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) The appointing authority or his designee shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 5. Family and Medical Leave. (1) The appointing authority or his designee shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar-year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 6. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 7. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast

Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority or his designee may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) The appointing authority or his designee shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) A central office[An] employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the time the polls are open, up to a maximum of four (4) hours. School-based employees shall receive time off to vote.

Section 9. Special Leave of Absence. (1) If approved by the associate commissioner for career and technical education[secretary], the appointing authority or their[his] designee may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) The appointing authority or his designee, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) The appointing authority or his designee may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct.

(a) The employee shall be notified in writing by the appointing authority or his designee that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(b) If the investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Office of Career and Technical Education.

(c) The appointing authority or his designee shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned in the interim.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations, and who chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, personal, emergency, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shut down the place of employment, the provisions established in this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 2 of this administrative regulation and the Fair Labor Standards Act as amended.

(6) Adverse weather leave shall not be used by school-based employees when school is in session. Adverse weather may be used by school-based employees under extraordinary circumstances, as determined by the associate commissioner for career and technical education.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor require the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) School-based employees shall not receive blood donation leave.

Section 13. Personal and Emergency Leave. (1) Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half (22.5) hours of personal leave.

(a) Personal leave shall accumulate at the beginning of each school year. Any unused personal leave in accordance with this section shall be converted to sick leave at the end of each school year.

(b) A teacher or principal who makes a timely request for personal leave shall be granted personal leave by the appointing authority, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(2) Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half (22.5) hours of emergency leave.

(a) Emergency leave shall accumulate at the beginning of each school year. Any unused emergency leave in accordance with this section shall expire at the end of each school year.

(b) Emergency leave may be used due to death, illness, injury, and certain other urgent matters. Teachers and principals shall give as much advance notice as possible to their supervisor prior to using emergency leave.

(c) Emergency leave shall be used in half-day (3.75 hour) increments when possible.

Section 14[43]. Eligibility for State-paid Health and Life Insurance Benefits. (1) A twelve (12) month employee who is eligible for state-paid life insurance benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(2) A twelve (12) month employee who is eligible for state-paid health insurance benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous pay period.

(3) A ~~teacher or principal~~~~ten and one-half (10 1/2) month employee~~ who is eligible for state-paid life insurance benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month, except between the ~~last day of school of the previous year and first day of school of the following year~~~~[dates of June 16 and July 31]~~.

(4) A ~~teacher or principal~~~~ten and one-half (10 1/2) month employee~~ who is eligible for state-paid health benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous pay period, except between the ~~last day of school of the previous year and first day of school of the following year~~~~[dates of June 16 and July 31]~~.

(5) A ~~teacher or principal~~~~ten and one-half (10 1/2) month employee~~ who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 156[154B] shall be entitled to state-paid health and life insurance benefits between the ~~last day of school of the previous year and first day of school of the following year~~~~[June 16 and July 31]~~.

(6) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education
MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: August 11, 2017

FILED WITH LRC: August 11, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2017, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this

agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends 780 KAR 3:072. The amendments grant twenty two and a half (22.5) hours of personal leave and emergency leave, and seventy five (75) hours of sick leave to principals and teachers in the Kentucky Tech system. The amendments establish that personal leave, emergency leave, and sick leave will accrue at the beginning of the school year, similar to a local school district. Accrual of compensatory time for teachers and principals has been eliminated. School-based employees will receive time off to vote, instead of accumulating voting leave due to the additional forms of leave being added. Adverse weather leave has been amended to become more flexible to meet the needs of the schedules of district feeder schools. These amendments also provide updated terminology, information, and processes related to Career and Technical Education (CTE) programs in Kentucky.

(b) The necessity of this administrative regulation: This regulation will bring the Kentucky Tech system into alignment with the number of days worked by teachers and principals in local school districts, the Kentucky School for the Blind, and the Kentucky School for the Deaf. The regulation will increase flexibility in the Kentucky Tech system to meet the needs of local schools and districts. The regulation will incentivize teachers to spend less time away from their classroom throughout the school year. The regulation will simplify the personnel system and reduce paperwork.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.029, 156.802, and 156.808.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation conforms to the authority given to the Kentucky Board of Education, aligns the Kentucky Tech system to the Kentucky School for the Deaf and Kentucky School for the blind, and incentivizes teachers to spend less time away from their classrooms throughout the school year.

(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: Amends 780 KAR 3:072. The amendments grant twenty two and a half (22.5) hours of personal leave and emergency leave, and seventy five (75) hours of sick leave to principals and teachers in the Kentucky Tech system. The amendments establish that personal leave, emergency leave, and sick leave will accrue at the beginning of the school year, similar to a local school district. Accrual of compensatory time for teachers and principals has been eliminated. School-based employees will receive time off to vote, instead of accumulating voting leave due to the additional forms of leave being added. Adverse weather leave has been amended to become more flexible to meet the needs of feeder schools. These amendments also provide updated terminology, information, and

processes related to Career and Technical Education (CTE) programs in Kentucky.

(b) The necessity of the amendment to this administrative regulation: This regulation will bring the Kentucky Tech system into alignment with the number of days worked by teachers and principals in local school districts, the Kentucky School for the Blind, and the Kentucky School for the Deaf. The regulation will increase flexibility in the Kentucky Tech system to meet the needs of local schools and districts. The regulation will incentivize teachers to spend less time away from their classroom throughout the school year. The regulation will simplify the personnel system and reduce paperwork.

(c) How the amendment conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.029, 156.802, and 156.808.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this regulation conform to the authority given to the Kentucky Board of Education, aligns the Kentucky Tech system to the Kentucky School for the Deaf and Kentucky School for the blind, and incentivizes teachers to spend less time away from their classrooms throughout the school year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The changes will impact all teachers and principals in the Kentucky Tech system, which includes 53 Area Technology Centers (ATCs).

(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: Human resources staff at KDE will need to "lock" the current annual leave and compensatory leave Kentucky Tech teachers and principals have earned up to this point. Human resources staff will also work with administrative staff at each of the ATCs to "deposit" personal leave, emergency leave, and sick leave for Kentucky Tech teachers and principals on the first day of the school year. Kentucky Tech principals will work with the Office of Career and Technical Education to process leave requests and determine when adverse weather leave is necessary. Human resources staff will convert remaining personal leave balances into sick leave balances at the end of each school year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Leave time will be granted at the beginning of the year, which provides the opportunity for new teachers to use leave immediately. This also provides existing principals and teachers the opportunity to use leave immediately if they have used all previous earned leave. The amendments encourage teachers to spend less time away from the classroom when students are in the building. The amendments provide more flexibility in granting adverse weather leave.

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

(a) Initially: ATC teachers and principals will earn a higher daily pay rate, as they will be working approximately 26 fewer days per year. There will be a cost savings to the Kentucky Department of Education (KDE) over time, due to employees no longer accruing compensatory time. There will also be a small cost savings on utility and building expenses in ATCs due to employees being in the building fewer days over the course of the school year.

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all Kentucky Tech system employees.

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? ATC teachers and principals will earn a higher daily rate, as they will be working approximately 26 fewer days per year. There will be a cost savings to KDE over time due to employees no longer accruing compensatory time. There will be a cost savings due to employees being in the building fewer days in the school year.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, 156.802, 156.808, 29 C.F.R. 825, 29 U.S.C. 201-219

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be a cost savings to KDE over time due to employees no longer accruing compensatory time. There will be a minimal cost savings due to employees being in the building fewer days in the school year.

(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.

(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.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will remain the same as in years past, but may require more staff time and resources to adjust to changes initially. Principals and teachers will not accrue compensatory time and will earn fewer days of annual leave, resulting in a long-term cost savings.

(d) How much will it cost to administer this program for subsequent years? The program will not cost additional money in subsequent years, and will likely result in a cost savings due to the fact that compensatory time will no longer accrue.

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

Revenues (+/-): N/A

Expenditures (+/-): Employees will be paid holiday pay and their regular daily rate for state holidays not honored by local districts. Staff time and resources to transition to the new system.

Other Explanation: Teachers and principals will be working fewer days, so there will be a minimal cost savings on building expenses. There will be a long-term cost savings resulting from the elimination of compensatory time.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

RELATES TO: KRS 156.808[154B.035](3)(i)

STATUTORY AUTHORITY: KRS 156.808[154B.035]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808[154B.035](3)(i) requires the Kentucky Board of Education[Executive Director of the Office of Career and Technical Education] to promulgate comprehensive administrative regulations relating to the extent and duration of the Kentucky Tech System school term, use of school days, and extended

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employment. This administrative regulation establishes the school term and employment provisions for employees.

Section 1. (1) The regular work year for any teacher[secondary instructor] in a state-operated area technology center shall be 190 work days between July 1 and June 30 annually, to be scheduled by the center principal[August 1 through June 15].

(2) During this work year, secondary students shall begin classes based on the participating school district schedules.

(3) An area technology center shall not be closed if secondary school students need to be served for the participating school districts.

(4) Any employee required to work on an official holiday in order to serve students shall be compensated[granted compensatory time].

(5) The duties of an area technology center principal shall consist of 228 work days between July 1 and June 30 annually, to be scheduled by the associate commissioner for career and technical education or their designee.

(6)[(5)] If the[a] school district where the center is located closes due to inclement weather, staff in the area technology center shall not report to work and the work day will be re-scheduled to meet student needs[as usual or take official leave unless a state of emergency is declared by the Governor or the appointing authority]. Non-traditional instruction days may be allowed at the discretion of the associate commissioner for career and technical education.

(7) The school calendar shall be adopted on or before May 30 of each year by the associate commissioner of career and technical education or their designee.

Section 2. (1) A teacher may be employed beyond the 190 work days if requested and approved by the associate commissioner for career and technical education or their designee[Except as provided in subsection (2) of this section, a secondary instructor in an area technology center may be employed up to six (6) weeks beyond the ten and one-half (10 1/2) month calendar year (August 1 through June 15) for specified activities which cannot be carried out routinely during the year and which include at least three (3) weeks of planned direct student contact].

(2)[The maximum extended time for an instructor without three (3) weeks of planned direct student contact shall be three (3) weeks.

(3) Extended instructional summer options shall be planned jointly by the instructor and either the school principal or executive director.

(4) Extended employment activities shall conform to the requirements established in this subsection.

(a) Up to six (6) weeks may be approved for supervision of students in specific classroom instruction. Before approval is granted for extended time, an instructional plan for the summer teaching activities shall be approved by the central office. This plan shall include the purpose, classes to be taught, time schedule, and inclusive dates.

(b) Up to one (1) week may be approved for required state technical update and school in-service.

(c) Up to two (2) weeks may be approved for staff or industry exchange and other educational approved programs.

(d) The associate commissioner for career and technical education or their designee[executive director] may request that the teacher[secondary instructor] perform other essential services for which extended employment shall be provided. The special request shall be handled on an individual basis.

(3)[(5)](a) To request extended employment, a teacher[secondary instructor] in an area technology center shall submit a request[completed Extended Employment Application for Secondary Teachers] to the teacher's[instructor's] principal.

(b) If the principal approves the request, the principal shall sign the application and submit it to the area supervisor.

(c) If the area supervisor approves the request, the area supervisor shall sign the application and submit it to the associate commissioner for career and technical education or their

designee[executive director] by April 15.

(d) The associate commissioner for career and technical education or their designee[executive director] shall send written notification regarding the decision to the teacher[instructor] by May 30. The notification shall indicate:

1. If the application was approved, the number of days for which approval was granted; and
2. If the application was not approved, the reasons for denial.

Section 3. (1) Any teacher[instructor] employed 190 working days[ten and one-half (10 1/2) months] may request that their[his] salary be paid in twenty-four (24) paychecks.

(2) The last two (2) paychecks shall be adjusted if necessary to reflect any salary variance due to changes in work schedules.

Section 4. (1) All area technology centers shall be officially closed to students on the official holidays designated for Christmas and New Year's.

~~(2)[An employee shall either work during this period or be on some form of approved leave. If the employee desires to work during this period, he may do so only upon the submission of a work plan by the employee and the approval of the plan by the employee's supervisor prior to the initiation of the work.~~

~~(3) The principal may require an employee to work for safety or security reasons. [Section 5. Incorporated by Reference. (1) "Extended Employment for 10 1/2 Month Employee", March 2009, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education and Workforce Development Cabinet, 500 Mero Street, 20th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D.

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: August 11, 2017

FILED WITH LRC: August 11, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2017, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed amendments switch Kentucky Tech teachers and principals from the ten and a half (10.5) month system of measuring a school year, to a calendar day system, similar to local school districts. The amendments will alter the dates a school year begins and ends.

The process to request extended employment will become less formal, and paperwork will be reduced as a result. These amendments also provide updated terminology, information, and processes related to Career and Technical Education (CTE) programs in Kentucky.

(b) The necessity of this administrative regulation: This regulation will bring the Kentucky Tech personnel system into alignment with local school districts, the Kentucky School for the Blind, and the Kentucky School for the Deaf. This regulation will bring the Kentucky Tech calendar into alignment with local school districts and the fiscal year. The revisions create flexibility that will help to meet the needs of students in districts served by the Kentucky Tech System. This regulation will streamline requests for extended employment and expand opportunities for professional development.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.029, KRS 156.802, and KRS 156.808.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will bring the Kentucky Tech calendar into alignment with the fiscal year. The regulation will bring the Kentucky Tech personnel system into alignment with similar requirements of local school districts, the Kentucky School for the Blind, and the Kentucky School for the Deaf. This regulation allows for a calendar day model, which increases the flexibility of the Kentucky Tech system to meet the scheduling needs of local schools and districts. This regulation streamlines requests for extended employment, which expands opportunities for professional development.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments switch Kentucky Tech teachers and principals from the ten and a half (10.5) month system of measuring a school year, to a calendar day system, similar to local school districts. The revisions create flexibility that will help to meet the needs of feeder districts. The amendments will alter the dates a school year begins and ends. The process to request extended employment will become less formal, and paperwork will be reduced as a result. These amendments also provide updated terminology, information, and processes related to Career and Technical Education (CTE) programs in Kentucky.

(b) The necessity of the amendment to this administrative regulation: This regulation will bring the Kentucky Tech personnel system into alignment with similar requirements in local school districts, the Kentucky School for the Blind, and the Kentucky School for the Deaf. This regulation will bring the Kentucky Tech calendar into alignment with local school districts and the fiscal year. The revisions create flexibility that will help to meet the needs of feeder districts. This regulation will streamline requests for extended employment and expand opportunities for professional development.

(c) How the amendment conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.029, KRS 156.802, and KRS 156.808.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will bring the Kentucky Tech calendar into alignment with the fiscal year. The regulation will bring the Kentucky Tech personnel system into alignment with similar requirements in local school districts, the Kentucky School for the Blind, and the Kentucky School for the Deaf. This regulation allows for a calendar day model, which increases the flexibility of the Kentucky Tech system to meet the needs of local schools and districts. This regulation streamlines requests for extended employment, which expands opportunities for professional development.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The changes will impact all teachers and principals in the Kentucky Tech system, which includes 53 Area Technology Centers (ATCs).

(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: Kentucky Tech principals will work with their supervisors to determine the work days for each school year. Non-traditional and extended employment requests will be submitted to the Associate Commissioner for approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Changes to this regulation will result in more flexibility for scheduling professional development. This regulation will allow more flexibility for principals in working with feeder districts. Most teachers and principals will work fewer days as a result of the changes, which will result in a higher daily rate of pay for many employees.

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

(a) Initially: There will be a cost savings to the Kentucky Department of Education (KDE) over time, due to employees no longer accruing compensatory time. Due to the alignment of calendars between ATCs and school districts, ATC teachers and principals will work fewer days per year, resulting in a slightly higher daily pay rate. There will also be a small cost savings on utility and building expenses in ATCs due to employees being in the building fewer days over the course of the school year.

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all Kentucky Tech teachers and principals.

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? There will be a cost savings over time due to employees earning fewer days of leave. There will be a minimal cost savings due to employees being in the building fewer days in the school year.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, KRS 156.802, and KRS 156.808.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be a minimal cost savings due to employees being in the building fewer days in the school year.

(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.

(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.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will remain the same as in years past, but may require more staff time and resources to adjust to changes initially. There will be a minimal cost savings due

to teachers and principals being in the building fewer days. Principals will have to work with local districts to submit calendar days for the ATC they oversee before the school year begins.

(d) How much will it cost to administer this program for subsequent years? The program will not cost additional money in subsequent years, and will likely result in a cost savings due to the fact that compensatory time will no longer accrue.

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

Revenues (+/-): N/A

Expenditures (+/-): Staff time and resources to transition to the new system.

Other Explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Wages and Hours
(Amendment)

803 KAR 1:100. Child labor.

RELATES TO: KRS 339.210-339.450, 29 C.F.R. 570, 29 U.S.C. 201-219

STATUTORY AUTHORITY: KRS 339.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 339.230(3) requires the Commissioner~~[Executive Director]~~ of the Department ~~[Office]~~ of Workplace Standards to promulgate administrative regulations to protect the life, health, safety or welfare of minors. He may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment and other pertinent factors. KRS 339.230(3) further provides that the commissioner in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he or she make them less restrictive~~[29 U.S.C. 201 to 219 of the Fair Labor Standards Act and 29 C.F.R. 570 establish that the executive director shall not promulgate administrative regulations less restrictive than those promulgated by the U.S. Secretary of Labor]~~. This administrative regulation establishes standards for the employment of minors. This administrative regulation and KRS 339.205 to 339.990 shall guide the Department~~[Office]~~ of Workplace Standards in carrying out its responsibilities under the law and assist employers in understanding their obligations under the law.

Section 1. Definitions. (1) "Minor" means a person between the ages of fourteen (14) and eighteen (18) who is either:

(a) Enrolled in public, private, or home school; or

(b) Not enrolled in school and has not achieved the required credits for graduation from high school as established by a local school district authority, pursuant to KRS 160.290.

(2) "School in session" means that time as established by local school district authorities, pursuant to KRS 160.290.

(3) "School not in session" means that period of time not included in subsection (1) of this section.

Section 2. Employment of Minors Between Fourteen (14) and Sixteen (16) Years of Age. (1) Minors between fourteen (14) and sixteen (16) years of age shall not be employed in any of the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performances of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations in connection with:

1. Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

2. Warehousing and storage;

3. Communications and public utilities; and

4. Construction (including demolition and repair), except office work, or sales work in connection with subparagraphs 1, 2, 3, and 4 of this paragraph, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

(f) Any occupation which the U.S. Secretary of Labor finds and declares to be hazardous for the employment of minors and established in 29 C.F.R. 570, Subpart E, Section 570.50 through 570.68; or

(g) Any occupation prohibited under KRS 339.230(2)(d).

(2) Except as provided in subsection (3) of this section, employment in any of the occupations to which this section is applicable shall be confined to the following periods:

(a) Outside school hours;

(b) Not more than forty (40) hours in any one (1) work week when school is not in session;

(c) Not more than eighteen (18) hours in any one (1) work week when school is in session;

(d) Not more than eight (8) hours in any one (1) day when school is not in session;

(e) Not more than three (3) hours in any one (1) school day, nor more than eight (8) hours in any one (1) nonschool day when school is in session;

(f) Between 7 a.m. and 7 p.m. in any one (1) day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(3) Notwithstanding subsection (2)(a) of this section, a minor who is enrolled in a school supervised and administered work experience or career exploration program pursuant to 29 C.F.R. 570, Subpart C, Section 570.35a, if the employment will not interfere with the minor's schooling, health, or well-being, may work during school hours.

(4) Minors between fourteen (14) and sixteen (16) years of age may be employed by retail, food service, and gasoline service establishments in the following occupations:

(a) Office and clerical work, including the operation of office machines;

(b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;

(c) Price marketing and tagging by hand or by machine, assembling orders, packing and shelving;

(d) Bagging and carrying out customer's orders;

(e) Errand and delivery work by foot, bicycle, and public transportation;

(f) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds. Cleanup work shall not include the use of power-driven mowers, or cutters;

(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to: dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders;

(h) Work in connection with cars and trucks if confined to the following: dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; and other occupations permitted by this section. This shall not include work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring; and

(i) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods if performed in areas physically separate from freezers and meat coolers.

(5) Subsection (4) of this section shall not be construed to permit the employment of minors between fourteen (14) and sixteen (16) years of age in any of the following in retail, food service, and gasoline service establishments:

(a) All occupations listed in subsection (1) of this section;

(b) Work performed in or about boiler or engine rooms;

(c) Work in connection with maintenance or repair of the establishment, machines, or equipment;

(d) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes;

(e) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;

(f) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;

(g) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in subsection (4)(i) of this section;

(h) Loading and unloading goods to and from trucks, railroad cars, or conveyors; or

(i) All occupations in warehouses except office and clerical work.

Section 3. Employment of Minors Between Sixteen (16) and Eighteen (18) Years of Age. (1) Minors between sixteen (16) and eighteen (18) years of age may be employed at any occupation except as restricted for the following occupations:

(a) Occupations particularly hazardous as declared by the U. S. Secretary of Labor and established in 29 C.F.R. 570, Subpart E, Section 570.50 through 570.68.

(b) Any occupation prohibited under KRS 339.230(2)(d).

(2) Employment in any occupation, not prohibited by subsection (1) of this section, shall be confined to the following periods:

(a) Not more than thirty (30) hours in any one (1) work week when school is in session, except that a minor may work up to thirty-two and one-half (32.5) hours in any one (1) work week if a parent or legal guardian gives permission in writing in accordance with paragraph (c) of this subsection and up to forty (40) hours in any one (1) work week if a parent or legal guardian gives permission in writing, and the principal or head of the school the minor attends certifies in writing that the minor has maintained at least a 2.0 grade point average in the most recent grading period. School certification shall be valid for one (1) year unless revoked sooner by the school authority. The parental or guardian permission and school certification shall remain at the employer's place of business;

(b) Not more than six (6) hours in any one (1) school day, nor more than eight (8) hours in any one (1) ~~non-school~~ day when school is in session, except that a minor may work up to six and one-half (6.5) hours in any one (1) school day if a parent or guardian gives permission in writing in accordance with paragraph (c) of this subsection;

(c) Between 6 a.m. and 10:30 p.m. on days preceding a school day, except that a minor may be employed until 11:00 p.m. on days preceding a school day if a parent or legal guardian gives permission in writing. The parental or guardian permission shall remain at the employer's place of business; and

(d) Between~~between~~ 6 a.m. and 1 a.m. on days preceding a ~~non-school~~ day when school is in session. ~~[Section 4. Effective Date. This administrative regulation shall become effective on June 15, 2002.]~~

ERVIN DIMENY, Commissioner

APPROVED BY AGENCY: July 18, 2017

FILED WITH LRC: July 18, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 25, 2017 at 10:00 a.m. in the Oscar Morgan Conference Room, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to CONTACT PERSONS: Brittany Thomas, Executive Administrative Secretary, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0960, fax (502) 564-2248, email BrittanyC.Thomas@ky.gov; and Ervin Dimeny, Commissioner, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0977, fax (502) 564-2248, email Ervin.Dimeny@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Ervin Dimeny and Brittany Thomas

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance with KRS 339.230, this administrative regulation establishes standards for the employment of minors between fourteen (14) and eighteen (18) years of age. In particular, Section 1 defines terms used in this administrative regulation. Section 2 identifies prohibited and permissible occupations for minors between fourteen (14) and sixteen (16) years of age. Section 2 also establishes limitations on the number of hours and hours of the day in which minors between fourteen (14) and sixteen (16) years of age may be employed. Section 3 identifies occupations in which employment of minors between sixteen (16) and eighteen (18) years of age is prohibited and establishes limitations on the number of hours and hours of the day in which minors between sixteen (16) and eighteen (18) years of age may be employed.

(b) The necessity of this administrative regulation: KRS 339.230(3) requires the Commissioner of the Department of Workplace Standards to promulgate regulations to properly protect the life, health, safety, or welfare of minors. In addition, KRS 339.230(2) authorizes the commissioner to prohibit the employment of minors between the ages of fourteen (14) and sixteen (16) in any place of employment or occupation that the commissioner deems to be hazardous or injurious to the life, health, safety, or welfare of such minors and to limit number of days per week, the hours per day, and the hours of the day that the commissioner determines is injurious to the life, health, safety, or welfare of such minors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 339.230 by establishing certain prohibitions and conditions on the employment of minors between fourteen (14) and eighteen (18) years of age.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation guides the Department of Workplace Standards in carrying out its responsibilities under KRS Chapter 339 and assists employers in understanding their obligations under the law.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amends Section 3 to allow minors between sixteen (16) and eighteen (18) years of age to work until 11:00 p.m., which is one-half hour later than currently allowed, on days preceding a school day if a parent or legal guardian gives permission in writing. To reflect the extended permissible work hours, the amendment increases by two-and-a-half hours the number of hours that may be worked in a week and by one half hour the total number of hours that may be worked in a day if parental or guardian permission is obtained. The amendment further requires the written permission to remain at the employer's place of business. The amendment also revises references to the agency head and agency name to reflect the current organizational structure of the Department of Workplace Standards, and it deletes outdated and unnecessary language.

(b) The necessity of the amendment to this administrative

regulation: This administrative regulation is part of the cabinet's effort under Governor Bevin's Red Tape Reduction Initiative to remove unnecessary regulatory burdens that impede businesses and the economic competitiveness of the Commonwealth. This amendment will better align Kentucky's child labor laws with the permissible work hours for minors in neighboring states while ensuring that parents and legal guardians approve work by a minor that extends until 11:00 p.m. on a day preceding a school day.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 339.230 authorizes the commissioner to promulgate regulations to protect the life, health, safety, or welfare of minors, including regulations regarding the number of hours and hours of the day during which minors between fourteen (14) and eighteen (18) years of age may be employed. This amendment conforms to KRS 339.230 by establishing the number of hours, hours of the day, and conditions under which minors between sixteen (16) and eighteen (18) years of age may work on days preceding a school day. In addition, 29 C.F.R. Part 570 does not establish hours or time restrictions for the employment of minors between sixteen (16) and eighteen (18) years of age. This amendment, therefore, conforms with KRS 339.230(3) in that it does not establish standards which are less restrictive than the regulations promulgated by the United States Department of Labor under the Fair Labor Standards Act.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation guides the Department of Workplace Standards in carrying out its responsibilities under KRS Chapter 339 and assists employers in understanding their obligations under the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all minors between fourteen (14) and eighteen (18) years of age who seek employment. In a similar fashion, it affects employers who employ minors between fourteen (14) and eighteen (18) years of age.

(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: Minors between sixteen (16) and eighteen (18) years of age will be permitted to work until 11:00 p.m., a half hour later than is currently permitted, on days preceding a school day with written permission of a parent or legal guardian. The amendment requires the employer to maintain the written permission at its place of business.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department of Workplace Standards does not expect there to be any substantial cost to comply with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With the written permission of a parent or legal guardian, employers may engage minors between sixteen (16) and eighteen (18) years of age, and such minors may work, a half hour later on days preceding school days, for up to six and one-half (6.5) hours in any one (1) day and up to thirty-two-and-a-half (32.5) hours in a work week.

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

(a) Initially: Except for minimal costs associated with the printing of posters summarizing the Commonwealth's child labor laws, the Department of Workplace Standards does not expect there to be any cost to implement this administrative regulation.

(b) On a continuing basis: There will be no significant cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As with the enforcement of other child labor laws under KRS Chapter 339 and its attendant regulations, the cost of enforcing this administrative regulation is funded through general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. The regulation does not inherently result in disproportionate impacts on certain classes of regulated entities, including government or small business, and does not regulate entities that do not contribute significantly to the problem the administrative regulation as designed to address.

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 any unit, part, or division of state or local government covered by KRS Chapter 339.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 339.230

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on state or local government agencies to administer.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on state or local government agencies to administer.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 5:070. Minors.

RELATES TO: KRS[241.030(37);] 244.080, 244.085,[244.087;] 244.090

STATUTORY AUTHORITY: KRS 241.060(1), 244.085(5)(a) NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board[Alcoholic Beverage Control Board] to promulgate administrative regulations regarding matters over which the board has jurisdiction[governing procedures relative to the supervision and control of the use and sale of alcoholic beverages]. Subject to certain exceptions in KRS 244.085, a licensee, or the licensee's agents, servants, or employees, may not permit persons under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises. In addition to the statutorily exempted business types, KRS 244.085(5)(a) authorizes the board to exempt additional business types from the prohibition of KRS 244.085(5) if

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their operations permit them to adequately monitor and prevent alcohol sales to minors. This administrative regulation specifically identifies a non-exhaustive list of additional business types exempted from KRS 244.085(5), and establishes requirements governing the presence of minors on licensed premises.

Section 1. Definitions. (1) "Barber shop" means an establishment licensed under KRS Chapter 317, at which the practice of barbering is conducted.

(2) "Bed and Breakfast" is defined by KRS 241.010(5).

(3) "Bowling alley" means a building containing several lanes for the sport of tenpin bowling.

(4) "Commercial airplane" means an airplane used by a commercial airlines system or charter flight system for regularly scheduled or charter flights airport" is defined by KRS 241.010(15).

(5) "Commercial airport" is defined by KRS 241.010(15).

(6) "Department store" means a retail establishment offering consumer goods for sale and including but not limited to clothing, furniture, jewelry, cosmetics, and other similar products.

(7) "Designated drinking area" means an area containing a bar, counter, or similar structure, where employees prepare and serve alcoholic beverages to customers, that is separated from the remainder of the premises by a barrier and that has no more than two (2) entrances and exits accessible from the remainder of premises. The designated drinking area may contain employee access by keyed entry and emergency exits equipped with crash bars.

(8) "Museum" means a building or place where works of art, scientific specimens, or other objects of cultural value are stored and exhibited.

(9) "Not-for-profit event" means an activity of limited duration organized and conducted by a charity or not-for-profit organization for fundraising or other purposes.

(10) "Organized civic or community-sponsored event" is defined by 804 KAR 4:250, Section 1.

(11) "Paint and Sip business" means a business that provides paid group painting lessons accompanied by alcoholic beverages.

(12) "Qualified historic site" is defined by KRS 241.010(47).

(13) "Riverboat" is defined by KRS 241.010(54).

(14) "Salon and Spa" means an establishment licensed under KRS Chapter 317A at which cosmetology, nail technology, or esthetic practices are conducted.

(15) "Train" means a railroad locomotive and cars used by a railroad system [Premises that qualify for the restaurant exemption, pursuant to KRS 244.085(6), shall only be exempted during those times of the day that meals are served to customers].

Section 2. Business Types that Can Adequately Monitor and Prevent Alcohol Sales to Minors. Pursuant to KRS 244.085(5)(a) and in addition to the business types identified in KRS 244.085(5)(a) and Section 3 of this administrative regulation, the board determines that the operations of the following specific business types allow them to adequately monitor and prevent alcohol sales to minors and that they may permit minors to remain on their licensed premises if operating as a:

(1) Barber shop;

(2) Bed and breakfast;

(3) Bowling alley;

(4) Charity conducting a not-for-profit event;

(5) Commercial airplane;

(6) Commercial airport;

(7) Department store;

(8) Museum;

(9) Paint and sip business;

(10) Qualified historic site;

(11) Riverboat;

(12) Salon and spa;

(13) Train; or

(14) Vendor operating at an organized civic or community-sponsored event. [Unless an establishment is exempted under KRS 244.085(6), every retail licensee that sells alcoholic beverages by the drink for consumption on the premises shall display at all times, in a prominent place, a printed card at least 8 in. x 11 in. in size

which shall read, in thirty (30) point or larger type, substantially as follows:

PERSONS UNDER 21 MAY NOT ENTER OR REMAIN ON THIS PREMISES.]

Section 3. Premises with Designated Drinking Areas. In addition to the businesses identified in KRS 244.085(5)(a) and Section 2 of this administrative regulation, a licensee may permit minors to remain on licensed premises where alcoholic beverages are sold by the drink or consumed if the licensee only conducts drink sales and permits consumption in a designated drinking area from which minors are excluded.

Section 4. Permissive Exclusion of Minors. Notwithstanding the provisions of KRS 244.085(5)(a) and Sections 2 and 3 of this administrative regulation, a licensee may exclude minors from parts or all of its premises.

Section 5. Minors on Premises Sign. Every licensee selling alcoholic beverages by the drink for consumption on premises where minors are prohibited, or in a designated drinking area where minors are prohibited, shall display at all times, in a prominent place near the entrance to the premises or designated drinking area where minors are prohibited, a printed card at least eight (8) inches x eleven (11) inches in size which shall read, in 100 point or larger type, substantially as follows: NO PERSONS UNDER 21 ALLOWED.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2017 at 10:30 a.m., Eastern Time, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by September 21, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Mercadante, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies and defines business types that may permit minors on their licensed premises where alcoholic beverages are sold by the drink or consumed. It also identifies the required language for signs at locations where alcoholic beverages are sold by the drink or consumed and minors are prohibited.

(b) The necessity of this administrative regulation: House Bill 183 eliminated the phrase "or similar establishment" from KRS 244.085(5)(a) and replaced it with regulatory authority to the board to identify which additional business types allow for the adequate monitoring and prevention of alcohol sales to minors. This statutory amendment was necessary to prevent bars from allowing minors on their premises under the vague phrase "or similar

establishment." As a result of this statutory change, this amendment is necessary as many of the business types listed in the amendment reflect prior, long-standing department interpretation of the phrase "or similar establishment" to allow businesses to permit minors on their premises. The amendment also provides flexibility for businesses to encourage entrepreneurship, foster creativity for new business models, and create jobs for the benefit of communities and consumers alike. The amendment also provides necessary clarity as to which drink licensees must post signs prohibiting minors from entering the premises or a designated drinking area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations relating to the licensing, supervision, and control of alcoholic beverages. KRS 244.085(5)(a) authorizes the board to promulgate administrative regulations regarding establishments where alcoholic beverages are sold by the drink or consumed and minors are present.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 244.085(5)(a) authorizes the board to identify other business types that may allow minors on their premises where alcoholic beverages are sold by the drink or consumed. This regulation amendment will specifically identify and define those additional exempted business types.

(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: Previously, Section 1 required businesses subject to the restaurant exemption to be exempted only during meals service hours. Section 1 now consists of definitions. The previous Section 2 included sign requirements for when minors were prohibited from entering or remaining on a licensed premises where alcoholic beverages are sold by the drink or consumed. The sign requirement has been moved to the new Section 5. The new Sections 2 and 3 identify other business types exempted from the general statutory prohibition of minors being present at retail drink premises. Many of these business types reflect prior department interpretation of the eliminated statutory phrase "or similar establishments."

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with the enactment of House Bill 183. House Bill 183 specifically added language to the statute authorizing the board to promulgate administrative regulations regarding additional business types where alcohol can be sold by the drink or consumed in the presence of minors.

(c) How the amendment conforms to the content of the authorizing statutes: The department is authorized to promulgate administrative regulations pursuant to KRS 241.060(1). KRS 244.085(5)(a) specifically authorizes the board to promulgate administrative regulations identifying additional business types where minors can be present while alcoholic beverages are sold by the drink or consumed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment identifies the specific business types generally referred to in KRS 244.085(5)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control, holders of the 16,000 plus licenses issued by the department, and potential licensees of the department will be affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The department does not anticipate any additional action on its part to implement this administrative regulation amendment. Licensees will not have to take any additional action to comply with this regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Potential licensees will be required to pay the cost of the license requested. The department does not anticipate any additional cost to comply with this administrative regulation, though it is anticipated that this administrative regulation will increase license applications, and it may generate additional department investigations and enforcement actions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Some of the listed business types may allow minors on their premises for the first time. It is anticipated that these new business types may experience a slight increase in business. The department may experience additional licensee fee revenue from increased license applications.

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

(a) Initially: There are no anticipated costs with the implementation of this amendment.

(b) On a continuing basis: There are no anticipated costs with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be used for the implementation and enforcement of 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: There is no anticipated increase in fees or funding necessary for this amendment.

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency expected to 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 241.060(1) authorizes the board to promulgate administrative regulations. KRS 244.085(5)(a), as amended by the enactment of HB 183, authorizes the board to promulgate administrative regulations specifically identifying establishments where alcoholic beverages can be served by the drink or consumed on the premises while minors are present.

(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 anticipated effect to expenditures; however, additional revenue may be generated as a result of the amendment since new licenses are likely to be issued.

(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 may experience additional licensee fee revenue from increased license applications.

(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.

(c) How much will it cost to administer this program for the first year? There is no anticipated cost to administer the change to this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated change in cost to

continue administering this 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: There is no anticipated fiscal impact as a result of this amendment.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(Amendment)**

805 KAR 7:020. Training and certification of inexperienced miners.

RELATES TO: KRS 351.102[, 351.105]

STATUTORY AUTHORITY: KRS 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Division[Office] of Mine Safety~~[and Licensing]~~ to establish a program of training for inexperienced miners~~[according to criteria and standards determined by the Mining Board]~~. This administrative regulation establishes a program of training for inexperienced miners.

Section 1. Training and Certification of Inexperienced Miners.

(1) A candidate desiring to obtain a permit as an inexperienced miner shall be at least eighteen (18) years of age prior to enrolling in an inexperienced miner class. The required trainee miner training shall be documented and include the following information:

- (a) Full name of person trained;
- (b) Miner identification number;
- (c) Type of mining operation;
- (d) Type of training received;
- (e) Date training completed;
- (f) Subjects taught in that training;
- (g) Signature of instructor;
- (h) Signature of miner;
- (i) Documentation providing proof the trainee is at least eighteen (18) years of age; and
- (j) Date of signatures. The documentation shall be embossed with the instructor's seal and embossed copy shall be provided to the miner.

(2)(a) The certificate earned by completing the trainee miner training program shall be valid for twelve (12) months preceding initial employment at a mine.

(b) If employment is not obtained within twelve (12) months, annual retraining requirements shall be successfully completed each year in order to maintain the trainee miner permit.

Section 2. Training Program. The training program for inexperienced miners shall include instruction in the following courses:

- (1) Introduction to mining;
- (2) Self-rescue devices;
- (3) The statutory rights of miners and their representatives;
- (4) Authority and responsibility of supervisors;
- (5) Entering and leaving a mine, transportation, and communication;
- (6) Mine map, escapeways, emergency evacuations, barricading;
- (7) Roof or ground control and ventilation plans;
- (8) Health standards;
- (9) Clean-up and rock dusting;
- (10) Hazard recognition;
- (11) Electrical hazard;
- (12) First aid;
- (13) Mine gases and explosives;
- (14) Accident prevention; and
- (15) Mining and mine safety related issue.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program of training for inexperienced miners.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a program of training for inexperienced miners.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 351 provides the department the authority to promulgate administrative regulations to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes a program of training for inexperienced miners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a program of training for inexperienced miners and will assist in the accurate interpretation of the administrative regulations in this chapter.

(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 makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the Division of Mine Safety rather than the Mining Board the authority to establish a program of training for inexperienced miners.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes, as amended by SB 249, by requiring the Division of Mine Safety to establish a program of training for inexperienced miners.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.106 provides the department the authority to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mine within Kentucky or is a certified miner or wishes to become a certified miner.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be trained using a Division of Mine Safety approved program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment. The Division of Mine Safety has been meeting these requirements.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment. The Division of Mine Safety will continue to meet these requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All certified miners will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.102, 351.105, 351.106

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.
Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Safety (Amendment)

805 KAR 7:030. Annual retraining.

RELATES TO: KRS 351.106

STATUTORY AUTHORITY: KRS [351.105,] 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.106 requires the Department for Natural Resources~~[of Mines and Minerals]~~ to establish an annual miner retraining program~~[according to the criteria and standards determined by the Mining Board]~~. This administrative regulation establishes the requirements and terms of the annual retraining program.

Section 1. (1) A certified underground miner shall receive a minimum of sixteen (16) hours of annual retraining. At least eight (8) hours of the annual retraining shall be:

(a) Administered in a classroom;

(b) Conducted by a Kentucky certified underground mining instructor and the amount of training documented on the training form defined in Section 1(3) of this administrative regulation and embossed with the instructor's seal;

(2) The balance of the annual retraining shall be administered in segments of not less than fifteen (15) minutes. Training administered in this manner shall be provided by, or under the direct supervision of, a Kentucky certified underground mining instructor or a Kentucky certified mine foreman. A person who receives annual retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement, and a record of each segment, including dates, duration, subject and attendees, shall be maintained at the mine site until the training form, Mine Safety and Health Administration Form 5000-23, described in Section 1(3) of this administrative regulation can be completed.

(3) Documentation of completed training shall include the following information:

(a) Full name of person trained;

(b) Miner identification number;

(c) Type of mining operation;

(d) Type of training received;

(e) Date training completed;

(f) Subjects taught in that training;

(g) Signature of instructor;

(h) Signature of miner; and

(i) Date of signatures. After completion of his training, or upon the miner leaving employment with the licensee, the miner shall receive a copy of all of his training records.

(4) The annual retraining courses shall include the following subjects:

(a) Transportation controls and communications systems;

(b) Barricading;

(c) Roof control and ventilation plans;

(d) First aid;

(e) Electrical hazards and moving equipment;

(f) Accident prevention;

(g) Self-rescue devices;

(h) Explosives;

(i) Health and safety standards; and

(j) Statutory rights of miners and their representatives.

Section 2. A person employed as a miner shall complete annual retraining within twelve (12) months from the end of the month of his most recent completed annual retraining requirement. A certified miner who has had a break in employment as an underground miner shall be eligible to work if he has successfully

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completed the annual retraining requirements within the last twelve (12) months.

Section 3. The licensee shall maintain verification of all miner training and certification at the mine premises. (1) The documentation shall include:

- (a) The dates the annual training sessions were conducted;
- (b) The name of the miner; and
- (c) The miner identification number.

(2) Licensees shall maintain documentation of the miners who are no longer employed by the licensee on the mine premises until the requirements of KRS 351.106(8) are met.

Section 4. Incorporation by Reference. (1) The Mine Safety and Health Administration Form 5000-23, revised October 1983, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Mine Safety [~~Department for Mines and Minerals~~], 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Department of Mines and Minerals to establish an annual miner retraining program according to the criteria and standards determined by the Mining Board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements and terms of the annual retraining program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 351 provides the department the authority to promulgate administrative regulations to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes the requirements and terms of the annual retraining program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements and terms of the annual retraining program.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to

implement the requirements of SB 249 from the 2017 Legislative Session. This amendment will require the Department for Natural Resources to establish the requirements and terms of the annual retraining program rather than the Department of Mines and Minerals and the standards will no longer be determined by the Mining Board.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require the Department for Natural Resources to establish the requirements and terms of the annual retraining program rather than the Department of Mines and Minerals and the standards will no longer be determined by the Mining Board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requiring the Department for Natural Resources to establish the requirements and terms of the annual retraining program.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.106 provides the department the authority to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine within Kentucky or any certified miner 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: The entities listed in question (3) above will be trained by a program established by the Department for Natural Resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All certified miners will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.106

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(Amendment)

805 KAR 7:040. Training of newly employed miners.

RELATES TO: KRS 351.103 [351.405]

STATUTORY AUTHORITY: KRS 351.102, [351.405;] 351.106(1)-(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish a miner training program for newly employed miners according to the criteria and standards determined by the Division of Mine Safety [Mining Board]. This administrative regulation establishes a program of training and examination for newly employed miners.

Section 1. Mine-specific Training for Newly Employed Miners.

(1) Each newly employed inexperienced miner shall receive a minimum of eight (8) hours training provided by the licensee. The training shall:

(a) Be performed by a Kentucky certified mine foreman or mining instructor; and

(b) Apply to the mine where the miner is to be employed.

(2) Each newly employed experienced miner shall receive sufficient training provided by the licensee. The training shall:

(a) Be performed by a Kentucky certified mine foreman or mining instructor; and

(b) Apply to the mine where the miner is to be employed.

(3) The training shall include instruction in accordance with 805 KAR 7:020, Section 2(2) through (15) [the courses set forth in 805 KAR 7:020, Section 2(2)-(15)], and shall be completed before the newly hired miner can be assigned any work duties.

(4) The licensee shall verify to the department documentation containing the following information:

(a) Full name of person trained;

(b) Miner identification number;

(c) Type of mining operation;

(d) Type of training received;

(e) Date training completed;

(f) Verification of eight (8) hours training in mine specifics;

(g) Signature of miner;

(h) Signature of instructor; and

(i) Date of signatures. The newly employed miner shall receive a copy of this form.

(5) Upon proof by a licensee that a reemployed experienced miner has received the training established in this administrative regulation within twelve (12) months preceding reemployment at the mine, the miner shall not be required to repeat the training established in this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Department of Mines and Minerals to establish a miner training program for newly employed miners according to the criteria and standards determined by the Mining Board.

(b) The necessity of this administrative regulation: This administrative regulation establishes a program of training and examination for newly employed miners.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 351 provides the department the authority to promulgate administrative regulations to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes the requirements and terms of the training program for newly employed miners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a program of training and examination for newly employed miners.

(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 makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session. This amendment will require the Division of Mine Safety to establish a miner training program for newly employed miners.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require the Department for Natural Resources to establish a miner training program for newly employed miners according to the criteria and standards determined by the Division of Mine Safety. The

amendment replaces the Department of Mines and Minerals with the Department for Natural Resources. This requirement will continue to be managed by the Division of Mine Safety.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requiring the Department for Natural Resources to establish a miner training program for newly employed miners according to the criteria and standards determined by the Division of Mine Safety.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.106 requires a newly employed miner to receive training. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session, which abolished the Mining Board and placed their duties with the authority of the Division of Mine Safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates a mine within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will follow a miner training program for newly employed miners according to the criteria and standards determined by the Division of Mine Safety.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment. The Division of Mine Safety has been meeting these requirements.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment. The Division of Mine Safety will continue to meet these requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All certified miners will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.103; KRS 351.102; 351.106(1)-(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.

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Safety (Amendment)

805 KAR 7:050. Training of miners for new work assignments.

RELATES TO: KRS 351.103[351.405]

STATUTORY AUTHORITY: KRS 351.102, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and KRS 351.106 ~~requires the department to establish~~[require the Department of Mines and Minerals to establish, according to criteria and standards determined by the Mining Board,] a miner training program that includes training of miners who receive new work assignments. This administrative regulation establishes a program of training and examination for miners who receive new work assignments.

Section 1. Task Training. (1) A miner who receives a new work assignment shall not perform the work duties until he has completed a training program as provided in Section 1(2) of this administrative regulation if his new work assignment requires direct operation of:

- (a) Mechanical machinery;
- (b) Electrical machinery; or
- (c) Equipment in connection with:
 - 1. Mobile equipment operations;
 - 2. Blasting and drilling operations;
 - 3. Haulage and conveyor system operations; or
 - 4. Roof control.

(2) The training program for miners who receive new work assignments shall include:

- (a) Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery;
- (b) Supervised practice during nonproduction;
- (c) Supervised operation during production;
- (d) New or modified machines and equipment; and
- (e) Mining and mine safety related issues.

Section 2. If a miner becomes qualified under the provisions of this administrative regulation to perform a work assignment, he shall continue to be qualified thereafter if the miner demonstrates safe operating procedures in performance of the work assignment. Each licensee shall maintain current documentation on the mine premises that the miner has demonstrated proficiency in work

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assignments pursuant to Section 1(1) of this administrative regulation.

Section 3. The provisions of this administrative regulation shall not be construed to alter or deprive a person of a right or duty accruing to that person by virtue of a labor-management contract.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program of training and examination for miners who receive new work assignments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a program of training and examination for miners who receive new work assignments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 351 provides the department the authority to promulgate administrative regulations to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes the requirements and terms of the annual retraining program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 351.102 and KRS 351.106 requires the establishment of miner training programs. This administrative regulation establishes a program of training and examination for miners who receive new work assignments.

(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 makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the Mining Board as the agency that establishes the standards of the training program. This authority has been given to the Division of Mine Safety.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requiring the department to establish a program of training and examination for miners who receive new work assignments rather than the Mining Board.

(d) How the amendment will assist in the effective

administration of the statutes: KRS 351.102 and KRS 351.106 requires the establishment of miner training programs. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session giving the authority to determine standards to the Department for Natural Resources rather than the Mining Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mine within Kentucky or is a certified miner or wishes to become a certified miner.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will follow a miner training program for miners who receive new work assignments with standards approved by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits because the department through the Division of Mine Safety was already performing these duties.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All certified miners will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.103, 351.102, 351.106

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(Amendment)**

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102[, 351.105, EO 2009-538]

STATUTORY AUTHORITY: KRS 351.070(13), 351.106(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.070(13) authorizes the Energy and Environment Cabinet[Environmental and Public Protection Cabinet] to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS Chapter 351.106(1) requires the department[Mining Board] to establish a program of training and education of inexperienced underground and surface coal miners.[EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet.] This administrative regulation establishes the procedure for public and private entities to submit training programs to the Division of Mine Safety[Mining Board] for approval.

Section 1. A training program for inexperienced miners shall be approved by the Division of Mine Safety[board] if the proposed program meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been certified by the Kentucky Department for Natural Resources and the U.S. Department of Labor, Mine Safety and Health Administration.

Section 2. (1) A person who desires to provide a training program to inexperienced miners shall submit the proposed training program to the Division of Mine Safety, 300 Sower Blvd, Frankfort, Kentucky 40601[Mining Board, P.O. Box 2244, Frankfort, Kentucky 40602-2244], for review.

(2) The proposed training program shall contain the following information:

- (a) The address and location of the training facility to be used;
- (b) A description of the equipment and facilities to be used;
- (c) A list of the participating instructors;
- (d) The content areas in the training program for which each instructor shall be responsible;
- (e) The approximate number of students per class;
- (f) The dates on which the training program will be conducted;
- (g) The name and address of the person responsible for the formulation and implementation of the training program;
- (h) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
- (i) A list of instructional material to be used including films or programmed material and noting where the material will be used within the instructional sequence; and
- (j) A description of the instructional methods to be used throughout the program including lecture-demonstration, personalized instruction, and team-teaching.

Section 3. (1) Approval granted by the Division of Mine Safety

[board] in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The Division of Mine Safety[department] shall have the authority to monitor an approved program without prior notice.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for public and private entities to submit training programs for approval.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedure for public and private entities to submit training programs to the Division of Mine Safety for approval.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 351 provides the department the authority to promulgate administrative regulations to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes the procedure for public and private entities to submit training programs for approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS Chapter 351.106(1) requires the department to establish a program of training and education of inexperienced underground and surface coal miners. This administrative regulation establishes the procedure for public and private entities to submit training programs to the Division of Mine Safety for approval.

(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 makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation removes the Mining Board as the agency that approves training programs to be used by public and private entities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing the procedure for public and private entities to submit training programs to the Division of Mine Safety for approval.

(d) How the amendment will assist in the effective administration of the statutes: KRS Chapter 351.106(1) requires the department to establish a program of training and education of inexperienced underground and surface coal miners. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mine within Kentucky or is a certified miner or wishes to become a certified miner.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will submit training programs to the Division of Mine Safety for approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment. The Division of Mine Safety has been meeting these requirements.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment. The Division of Mine Safety will continue to meet these requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All certified miners will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.101; 351.102; 351.070(13); 351.106(1)

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Safety (Amendment)

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

RELATES TO: KRS 351.1041, 351.120, 351.194, 352.010-352.540[352.550]

STATUTORY AUTHORITY: KRS 351.025(1)(a), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Commissioner of the Department for Natural Resources[~~Department of Mines and Minerals~~] to promulgate administrative regulations that establish comprehensive criteria for the proper administration of KRS 351.090 to 351.9901. KRS 351.025(1)(a) requires the Department for Natural Resources[~~Department of Mines and Minerals~~] to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified miners whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission that a miner has committed this type of violation.

Section 1. (1) If a certified miner commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may revoke or suspend the miner's certificate for a period of time to be determined at the discretion of the commission, pursuant to KRS 351.194(5) and (6), or it may probate the miner's certificate for a period of no greater than ten (10) working days.

(2) If a certified miner's certificate is revoked pursuant to subsection (1) of this section, the miner may apply to the Division of Mine Safety[~~Kentucky Mining Board~~] for the reinstatement of his certificate, after the revocation period has ended, and after he has retaken and passed the requisite examination required for the certification. The Division of Mine Safety[~~Mining Board~~] may grant or deny the application.

(3) If a certified miner's certificate is suspended, pursuant to subsection (1) of this section, it shall be automatically reinstated at the end of the specified period of suspension. A suspension imposed by the commission may be for nonconsecutive days.

(4) If a certified miner is placed on probation, the Mine Safety Review Commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation. If the certified miner satisfies the terms of his probation, the probation shall automatically expire at the end of the probationary period.

(5) If a certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or subsequent offense, holds more than one (1) certificate, the commission may revoke, suspend, or probate some or all of the

miner's certificates.

(6) If a certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or subsequent offense, is an hourly employee and not a foreman, in determining the penalty for the miner, the commission shall determine and state in its decision whether the miner was ordered by a foreman or other superior to violate the mine safety law in question, or whether the miner acted solely on his own accord, if the miner raises that issue. If the commission determines that the miner was ordered by a foreman to violate the mine safety law, the commission shall state whether and why that fact mitigated the severity of the penalty it imposed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(1)(a) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified miners whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission.

(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 criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to replace the Mining Board with the Division of Mine Safety. SB 249 from the 2017 Legislative Session abolished the Mining Board and provided the authority to the Division of Mine Safety.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by providing the Division of Mine Safety authority to establish the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission.

(d) How the amendment will assist in the effective administration of the statutes: These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session and assists in the effective administration of the statutes by providing the Division of Mine Safety the authority formally held by the Mining Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mines within Kentucky or is a certified miner or wishes to become a certified miner.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will follow criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission. This criteria is now under the authority of the Division of Mine Safety as is the authority to reinstate certifications after a first offense.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The action of reinstating certifications of first offenses will now be under the authority of the Division of Mine Safety. Individuals applying to have their certifications reinstated will no longer need to wait for a meeting of the Mining Board.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that are seeking reinstatement of certifications will be handled 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 for Natural Resources, Division of Mine Safety and the Mine Safety Review Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.1041; 351.120; 351.194; 352.010 - 352.540; KRS 351.025(1)(a); 351.070(13)

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(Amendment)

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

RELATES TO: KRS 351.1041, 351.120, 351.194, 352.010-352.540[352.550]

STATUTORY AUTHORITY: KRS 351.025(1)(b), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Commissioner of the Department for Natural Resources[~~Department of Mines and Minerals~~] to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS 351.090 to 351.9901. KRS 351.025(1)(b) requires the Department for Natural Resources[~~Department of Mines and Minerals~~] to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed this type of violation.

Section 1. (1) If an owner or part-owner of a licensed premises commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$2,500 and not more than \$10,000.

(2) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352[~~Kentucky's mining laws~~], subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed

a miner in imminent danger of serious injury or death, the Division of Mine Safety [Kentucky Mining Board] shall consider that adverse adjudication during its consideration of the individual's application. The Division of Mine Safety[~~Mining Board~~] may grant or deny the application.

(3) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety[~~Kentucky Department of Mines and Minerals~~] shall consider that adverse adjudication during its consideration of the application. The Division of Mine Safety[~~department~~] may grant or deny the application.

(4) If an owner or part-owner of a licensed premises commits a second offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$5,000 and not more than \$10,000.

(5) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352[~~Kentucky's mining laws~~], subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety[~~Kentucky Mining Board~~] shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission[~~Mining Board~~] and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Division of Mine Safety[~~Mining Board~~] may grant or deny the application.

(6) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety [Kentucky Department of Mines and Minerals] shall consider that adverse adjudication during its consideration of the application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to hold a mine license in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission[~~department~~] and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The division[~~department~~] may grant or deny the application.

(7) If an owner or part-owner of a licensed premises commits a third offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$7,500 and not more than \$10,000.

(8) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by an owner or part-owner of a licensed premises, whether those offenses were committed at the same mine or at more than one (1) mine, the owner or part-owner shall not be eligible to obtain or hold any mine certificate or mine license within the Commonwealth of Kentucky.

(9) Penalties against owners or part-owners of licensed premises, imposed pursuant to subsection (1), (4), or (7) of this section, may only be imposed for the individual acts of the owner or part-owner, not for the acts of another.

(10) If an owner or part-owner of a licensed premises is also a certified miner at the time of committing his first or second offense, the Mine Safety Review Commission may additionally impose on that owner or part-owner any nonmonetary penalties applicable to certified miners pursuant to 805 KAR 8:030.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed this type of violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(1)(b) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(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 criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(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 makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: KRS 351.025(1)(b) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This

amendment was necessary to implement the changes related to SB 249 from the 2017 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.025 requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against individuals that are owners or part-owners of licensed premises, and that the Mine Safety Review Commission may impose civil monetary penalties. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mine within Kentucky or is a certified miner or wishes to become a certified miner.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will follow established criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission. The amendment will not significantly alter any processes except that the Division of Mine Safety replaces the Mining Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits. Owners or part-owners of a licensed premises will apply to the Division of Mine Safety for a foreman's certificate, an inspector's certificate, or any other certificate and the division will consider the merits of the application and the violations rather than the Mining Board.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All applications submitted by individuals under the authority of this administrative regulations will be considered under the same requirements by the Division of Mine Safety.

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 Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.1041; 351.120; 351.194; 352.010- 352.540; KRS 351.025(1)(b); 351.070(13)

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(Amendment)

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

RELATES TO: KRS 351.1041, 351.194, 352.010-~~352.540~~ [352.550]

STATUTORY AUTHORITY: KRS 351.025(1)(c), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Commissioner of the Department for Natural Resources~~[Department of Mines and Minerals]~~ to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS 351.090 to 351.9901. KRS 351.025(1)(c) requires the Department for Natural Resources~~[Department of Mines and Minerals]~~ to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against noncertified personnel whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary fines and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed this type of violation.

Section 1. (1) If a noncertified person commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary fine against the noncertified person equivalent to the value of the wages received by that person for up to ten (10) working days.

(2) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352~~[Kentucky's mining laws]~~, subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered

another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety~~[Kentucky Mining Board]~~ shall consider that adverse adjudication during its consideration of the individual's application. The Division of Mine Safety~~[Mining Board]~~ may grant or deny the application.

(3) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352~~[Kentucky's mining laws]~~, subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety~~[Kentucky Mining Board]~~ shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission~~[Mining Board]~~ and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Division of Mine Safety~~[Mining Board]~~ may grant or deny the application.

(4) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by a noncertified person, that person shall not be eligible to obtain or hold any mine certification within the Commonwealth of Kentucky.

(5) A noncertified person who is also an owner or part-owner of a licensed premises shall be penalized under the provisions applicable to owners and part-owners, pursuant to 805 KAR 8:040, rather than under the provisions applicable to noncertified personnel, pursuant to subsections (1) through (4) of this section.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for the imposition of civil monetary fines and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed this type of violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed violations.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 351.025(1)(c) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against noncertified personnel whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed violations.

(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 criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed violations.

(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 makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: KRS 351.025(1)(c) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against noncertified personnel whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This amendment is necessary to remove the Mining Board as the agency that reviews applications for certifications and considers the violations against the noncertified individuals.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed violations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.025 requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against individuals that are noncertified personnel and that the Mine Safety Review Commission may impose civil monetary fines. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mine within Kentucky or is a certified miner or wishes to become a certified miner.

(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: As a result of the amendments to this administrative regulations the entities listed in question (3) above will simply apply to the division rather than the Mining Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits. Noncertified personnel that applies for a foreman's certificate, an inspector's certificate, or any other certificate shall apply to the division rather than the Mining Board.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All noncertified individuals seeking certification will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.1041; 351.120; 351.194; 352.010- 352.540; KRS 351.025(1)(c); 351.070(13)

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (New Administrative Regulation)

16 KAR 1:015. Standards for certified teacher leader.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires the Education Professional Standards Board to establish standards for obtaining and maintaining educator certification. This administrative regulation establishes the standards required for certified teachers to obtain or maintain certification as a teacher leader.

Section 1. Teacher Leader Standards for Educator Preparation and Certification. Effective August 2019, the Education Professional Standard Board shall use the standards established in this section in the evaluation and assessment of a teacher leader for advanced certification and for the approval of teacher leader master preparation programs. (1) Standard 1. Foster a Collaborative Culture to Support Educator Development and Student Learning.

(a) The teacher leader shall be well versed in adult learning theory and shall use that knowledge to create a community of collective responsibility within his or her school; and

(b) In promoting this collaborative culture among fellow teachers, administrators, and other school leaders, the teacher leader shall ensure improvement in educator instruction and, consequently, student learning.

(2) Standard 2. Access and Use Research to Improve Practice and Student Learning.

(a) The teacher leader shall keep abreast of the latest research about teaching effectiveness and student learning, and shall implement best practices where appropriate; and

(b) He or she shall model the use of systematic inquiry as a critical component of teachers' ongoing learning and development.

(3) Standard 3. Promote Professional Learning for Continuous Improvement.

(a) The teacher leader shall understand that the processes of teaching and learning are constantly evolving; and

(b) The teacher leader shall design and facilitate job-embedded professional development opportunities aligned with school improvement goals.

(4) Standard 4. Facilitate Improvements in Instruction and Student Learning.

(a) The teacher leader shall possess a deep understanding of teaching and learning, and model an attitude of continuous learning and reflective practice for colleagues; and

(b) The teacher leader shall work collaboratively with other teachers to improve instructional practices constantly.

(5) Standard 5: Promote the Use of Assessments and Data for School and District Improvement.

(a) The teacher leader shall be knowledgeable about the design of assessments, both formative and summative; and

(b) He or she works with colleagues to analyze data and interpret results to inform goals and to improve student learning.

(6) Standard 6: Improving Outreach and Collaboration with Families and Community

(a) The teacher leader shall understand the impact that families, cultures, and communities have on student learning; and

(b) As a result, the teacher leader shall seek to promote a sense of partnership among these different groups toward the common goal of excellent education.

(7) Standard 7: Advocate for Student Learning and the Profession.

(a) The teacher leader shall understand the landscape of education policy and shall identify key players at the local, state, and national levels; and

(b) The teacher leader shall advocate for the teaching profession and for policies that benefit student learning.

ROB AKERS, Board Chair

BILL TWYMAN, Board Chair

APPROVED BY AGENCY: July 25, 2017

FILED WITH LRC: August 2, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2017 at 10:00 a.m., at 100 Airport Road, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 30, 2017. 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: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes teacher leader standards.

(b) The necessity of this administrative regulation: Through this regulation, the EPSB is establishing the standards educator preparation providers will need to use when creating advanced programs for teacher leaders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(b) states that the Education Professional Standards Board has the authority and responsibility to "[s]et standards for programs of preparation of teachers and other school personnel."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist educator preparation programs when they are creating advance programs for teacher leaders. It will also guide the EPSB when reviewing and approving advanced programs for teacher leaders proposed by education preparation providers.

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

(a) This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect those education preparation providers interested in offering advanced programs for teacher leaders.

(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: Educator preparation providers will need to use these standards when creating advanced programs for teacher leaders. Educator preparation providers will need to be able to demonstrate to the EPSB during program reviews that the

educator preparation provider is teaching the knowledge, skills, and competencies necessary for successful teacher leaders.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new administrative regulation should not result in any additional cost to the educator preparation providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teaching quality is the most important school-based factor in determining student success and we must ensure that all Kentucky teachers enter their classroom prepared to excel. This new administrative regulation will help ensure the educator preparation providers are developing advanced programs that will prepare experienced teachers to become leaders in their schools and districts.

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

(a) Initially: The EPSB does not anticipate any cost will be associated with this new administrative regulation.

(b) On a continuing basis: The EPSB does not anticipate any cost will be associated with this new administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated by the General Assembly to the Education Professional Standards Board.

(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 EPSB does not anticipate an additional fee or funding increase.

(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 directly nor does it indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering has not been applied to this regulation. This new administrative regulation applies to all educator preparation providers.

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 those educator preparation providers that currently offer advanced programs for teacher leaders as well as those educator preparation providers that plan on developing an advanced program for teacher leaders.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1)(b) provides that the Education Professional Standards Board shall set standards for programs for the preparation of teachers.

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.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Pharmacy (New Administrative Regulation)

201 KAR 2:390. Third-party logistics provider.

RELATES TO: KRS 315.002, 315.005, 315.191(1)(a), 315.400(18), 315.4102, 315.4104, 315.4106, 315.4108, 315.4110

STATUTORY AUTHORITY: KRS 315.400(18), 315.4102, 315.4104, 315.4108, 315.4108, 315.4110

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.400(18) defines a third-party logistics provider. KRS 315.4102 requires a third-party logistics provider to be licensed. KRS 315.4104 requires an application and accompanying information. KRS 315.4106 establishes eligibility factors for licensure and renewal. KRS 315.4108 identifies persons disqualified as owners and designated representatives of third-party logistics providers. KRS 315.4110 establishes criteria for lawfully conducting business as a third-party logistics provider in the Commonwealth of Kentucky. This administrative regulation establishes requirements for third-party logistics providers to become licensed and operate.

Section 1. Application Requirements for Licensure Application and Renewal. (1) An applicant for initial licensure or renewal as a third party logistics provider shall submit a non-refundable fee of \$200 and a complete "Application to Operate as a Third-Party Logistics Facility" as referenced and incorporated herein. With each application for an initial license or renewal, the applicant shall provide the following information:

(a) The state of incorporation or organization if the owner is a corporation;

(b) A list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services;

(c) Information pertaining to any violation of federal, or state laws by the applicant, officer, partner, director, or pharmacist-in-charge;

(d) Information pertaining to suspension, revocation, or any sanction against a license currently or previously held by the applicant, officer, owner, partner, director, member, or pharmacist-in-charge; and

(e) Documentation of licensure as a third-party logistics provider from either the state in which the provider ships or the United States Food and Drug Administration.

(2) Licenses expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$200 for failure to renew by June 30 of each year.

(3) Licenses shall be issued only for the name, ownership, and location listed on the license application. Changes of name, ownership, or location shall require a new license.

Section 2. General Requirements. A third-party logistics provider shall:

(1) Immediately provide, upon written request of the board or its agents, and maintain for board inspection, a list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services;

(2) Immediately provide, upon written request of the board or its agents, and maintain for board inspection, a list of each partner, limited liability company member, and corporate officer or director, including a description of the duties and qualifications of each;

(3) Maintain, and make available for board inspection, records of providing third-party logistics services involving prescription drugs, and if such records are not maintained, submit an explanation why it has no records of providing third-party logistics services involving prescription drugs; and

(4) Follow closure procedures as stated in 201 KAR 2:106, Section 2.

Section 3. Incorporation by Reference. (1) "Application to Operate as a Third-Party Logistics Facility", July 2017, is

incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2017, at 10:00 a.m. at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, 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, email Steve.Hart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for third-party logistics providers.

(b) The necessity of this administrative regulation: This regulation establishes requirements as authorized by KRS 315.4102-315.4110.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes application requirements for initial application and renewal, qualifications for a license, and other general requirements as authorized by KRS 315.4102-4110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Third-party logistics providers will know how to obtain a license and conduct business in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 250 entities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will submit an application, pay a fee, and conduct business pursuant to the authorizing statutes

and regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board will charge \$200 for the initial application and each renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will issue a permit to operate an outsourcing facility if qualifications for a license are sufficient.

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

(a) It costs approximately \$200 per licensee to license, inspect, and enforce applicable laws and regulations that pertain to outsourcing facilities.

(b) On a continuing basis: The board will incur costs of approximately \$200 per licensee annually on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through license fees. The Board of Pharmacy generates its own revenues without contribution from the General Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a fee authorized by KRS 315.4104.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applied to all applicants equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.4102-4110 authorize the board to promulgate administrative regulations to regulate and control third-party logistics providers.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The board anticipates \$50,000 in revenue that will be generated in fees 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 board anticipates \$50,000 in revenue that will be generated in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? The board anticipates it will spend \$50,000 to license, inspect, and enforce the laws and regulations that govern third-party logistics providers for the first year.

(d) How much will it cost to administer this program for subsequent years? The board anticipates it will spend \$50,000 to license, inspect, and enforce the laws and regulations that govern third-party logistics providers for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Pharmacy
(New Administrative Regulation)**

201 KAR 2:400. Outsourcing facility.

RELATES TO: KRS 315.002, 315.005, 315.010(16), 315.191(1)(a), 315.340, 315.342

STATUTORY AUTHORITY: KRS 315.010(16), 315.340, 315.342

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.340 establishes requirements for in-state outsourcing facilities doing business in Kentucky. KRS 315.342 establishes requirements for out-of-state outsourcing facilities doing business in Kentucky. This administrative regulation establishes further requirements for in-state and out-of-state outsourcing facilities.

Section 1. Application Requirements for Initial Licensure and Renewal. (1) An applicant for initial licensure or renewal as an outsourcing facility shall submit:

(a) A nonrefundable fee of \$250;

(b) A complete "Application to Operate as an Outsourcer Facility";

(c) Unless previously provided, proof of registration as an outsourcing facility with the secretary of the U. S. Department of Health and Human Services, Food and Drug Administration; and

(d) Unless previously provided, a copy of the current inspection report conducted by the United States Food and Drug Administration pursuant to KRS 315.342(2)(a)(2) and (b)(1), if applicable. If a current inspection report is not available from the United States Food and Drug Administration, the applicant shall submit an inspection report by:

1. National Association of Boards of Pharmacy (NABP); or
2. The board's authorized agent.

(2) A license shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$250 for failure to renew by June 30 of each year.

Section 2. Qualifications for License. (1) The board shall consider the following in determining whether to grant a license:

(a) A felony conviction related to:

1. The practice of pharmacy;
2. Drugs; or
3. Federal or state medical assistance programs;

(b) The furnishing of false or fraudulent information in any application;

(c) Suspension or revocation of a license or permit by federal, state, or local government;

(d) Compliance with a previously granted license or permit; and

(e) Failure to maintain and make readily available those records required to be maintained by an outsourcing facility.

(2) The Board shall have the right to deny a license to an applicant if, in considering the factors listed in subsection 1 of this Section, it determines that granting such a license would not be consistent with public health and safety.

Section 3. General Requirements. An outsourcing facility shall:

(1) Permit, to the extent authorized by laws or rules, board agents to enter and inspect its premises and delivery vehicles, to audit its records and written operating procedures, and to confiscate prescription drugs and records; and

(2) Follow closure procedures as stated in 201 KAR 2:106 Section 2.

Section 4. Incorporation by Reference. (1) "Application to Operate as an Outsourcer Facility", July 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2017, at 10:00 a.m. at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, 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, email Steve.Hart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for in-state and out-of-state outsourcing facilities.

(b) The necessity of this administrative regulation: This regulation sets requirements as authorized by KRS 315.340 and 315.342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes application requirements for initial application and renewal, qualifications for a license, and other general requirements as authorized by KRS 315.340 and 315.342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Outsourcing facilities will know how to obtain a permit and conduct business in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 100 facilities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will submit an application, pay a fee, and conduct business pursuant to the authorizing statutes and regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KRS 315.340 permits a fee (initial application and renewal) up to \$500, but the board will only charge \$250. KRS

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315.342 permits a fee of \$250 (initial application and renewal), and the board will charge \$250.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will issue a permit to operate an outsourcing facility if qualifications for a license are sufficient.

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

(a) Initially: No new costs will be incurred by the board, since many of the businesses previously licensed by the board as wholesale distributors will now convert to an outsourcer facility license. It costs approximately \$250 per licensee to license, inspect, and enforce applicable laws and regulations that pertain to outsourcing facilities.

(b) On a continuing basis: The board will incur costs of approximately \$250 per licensee annually on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through license fees. The Board of Pharmacy generates its own revenues without contribution from the General Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establish fees authorized by KRS 315.340 and 315.342.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applied to all applicants equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.340 authorize the board to promulgate administrative regulations to regulate and control in-state outsourcing facilities. KRS 315.342 authorize the board to promulgate administrative regulations to regulate and control out-of-state outsourcing facilities.

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 board anticipates \$25,000 in revenue that will be generated in fees 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 board anticipates \$25,000 in revenue that will be generated in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? The board anticipates it will spend \$25,000 to license, inspect, and enforce the laws and regulations that govern outsourcing facilities for the first year.

(d) How much will it cost to administer this program for subsequent years? The board anticipates it will spend \$25,000 to license, inspect, and enforce the laws and regulations that govern outsourcing facilities for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Diabetes Educators (Repealer)

201 KAR 45:071. Repeal of 201 KAR 45:070.

RELATES TO: KRS 309.335(3), (4)

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331

requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. The content of 201 KAR 45:070 is no longer necessary, as it only sets forth application procedures for licensure prior to July 1, 2014 and May 4, 2014 in accordance with KRS 309.335(3) and (4). The period for applications under those subsections has expired.

Section 1. 201 KAR 45:070, Application procedures for current practitioners, is repealed.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 9:30 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, 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 cancelled. This hearing is open to the public. Any person who wished 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 September 30, 2017. 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements for currently practicing diabetes educators to apply for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the requirements for currently practicing diabetes educators to apply for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective

administration of the statutes: This administrative regulation will set application procedures for currently practicing diabetes educators to apply for licensure.

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

(a) How the amendment will change this existing administrative regulation: This repeals the regulation.

(b) The necessity of the amendment to this administrative regulation: The regulation is no longer necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The procedures authorized by KRS 309.335(3) and (4) have expired.

(d) How the amendment will assist in the effective and administration of the statutes: The repeal will reduce the number of regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No entities will be affected by the repeal of this regulation, as the procedures specified in it have expired.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: N/A.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The fees are established in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (New Administrative Regulation)

405 KAR 20:090. Underground only permits.

RELATES TO: KRS 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465 authorizes the cabinet to promulgate environmental protection performance standards for all surface coal mining and reclamation operations. This administrative regulation sets forth certain performance standards for underground only permits.

Section 1. Coal Recovery. Underground only mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity.

Section 2. Permanent Abandonment of Operations. (1) Notice required. On or before the date of permanent abandonment of underground only operations, the permittee shall provide written notice to the cabinet that permanent abandonment is intended.

(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, in accordance with the requirements of KRS Chapter 350, the administrative regulations of KAR Title 405, and the permit.

Section 3. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with the surface and groundwater monitoring requirements of 405 KAR 18:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2017 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 20, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth certain performance standards for underground only permits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to performance standards for underground only permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation provides general information related to performance standards for underground only permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information related to performance standards for underground only permits. This administrative regulation provides the regulated entity the necessary information related to performance standards on underground only permits.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer be required to permit area overlying underground workings. However, the entities will continue to be required to meet the performance standards listed in this administrative regulation as it relates to underground only mines.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments. Entities have been meeting these standards in the past as it relates to underground mining activities. This administrative regulation was necessary to inform the regulated entity of the continued requirement after the passage of HB 234.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers. However, this new administrative regulation will only continue the requirement for meeting performance standards as it relates to underground only mines

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

(a) Initially: There will be no costs to the department associated with implementation of this new administrative regulation.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this new administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground only coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.151, and 350.465.

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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.59, 817.131, and 817.132(a).

2. State Compliance Standards. KRS 350.028, 350.151, 350.465

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for coal recovery, temporary cessation orders, and permanent abandonment of operations as these topics relate to underground mines.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

**TRANSPORTATION CABINET
Department of Aviation
(New Administrative Regulation)**

602 KAR 15:030. Fees for services and facilities of the Capital City Airport.

RELATES TO: KRS Chapter 13B, 45.453, 174.504, 183.011(2), (5)

STATUTORY AUTHORITY: KRS 174.504

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.504 requires the cabinet to promulgate administrative regulations establishing fees for users of the services and facilities of the Capital City Airport (CCAD) and for the usage of state aircraft. This administrative regulation establishes hangar fees, tie-down fees, fees for fuel and lubricants, fees for aircraft services, and usage fees for state aircraft pursuant to KRS 174.504.

Section 1. Definitions. (1) "Aeronautical activity" means an activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of operations.

(2) "Aircraft" is defined by KRS 183.011(2).

(3) "Airport" is defined by KRS 183.011(5).

(4) "Airport manager" means the designated individual appointed by the airport owner authorized to administer and manage the operations of the airport and airport facility.

(5) "Aviation fuel" means a specialized type of petroleum-based fuel that is used to power aircraft including jet fuel and aviation gasoline.

(6) "Fixed cost" means the cost or expense of operating aircraft that result from owning and supporting the aircraft including costs for insurance.

(7) "Hangar" means a type of enclosed structure designed to hold one (1) or more aircraft and items incidental to the operation and maintenance of the stored aircraft.

(8) "Hobbs meter" means a device that measures elapsed time that is wired in series with the collective control and a switch activated by engine or transmission oil pressure.

(9) "Lease" means the written contract between the airport or airport owner and a lessee specifying the terms and conditions under which the lessee may conduct commercial or aeronautical activities on or at the airport.

(10) "Periodic cost" means the cost or expense for modernization, painting, or refurbishment.

(11) "State aircraft usage" means the use of state aircraft for on-demand air transportation by state officials and employees traveling on official state business.

(12) "T-hangar" means a type of enclosed structure designed to hold a single aircraft in protective storage.

(13) "Tie-down" means an outdoor spot used by smaller aircraft to park that usually has a set of three (3) ropes for tying down the aircraft.

(14) "Variable costs" means the costs or expenses that vary depending on how much an aircraft is used including crew fees, maintenance, fuel, and landing and tie-down fees.

Section 2. Rates and Charges. (1) The airport manager shall maintain a current schedule of rates and charges for the use of the airport and its facilities.

(2) Unless otherwise provided by lease or agreement, a person shall not use an area of the airport or the airport's facilities without payment of the rates and charges established in this administrative regulation except areas designated for open use by the general public.

Section 3: Hangar Fees. (1)(a) The rental fee for a hangar shall be set at a fixed price per square foot of the leased space and calculated by multiplying aircraft length x width x seventy-five (75) percent x cost per square foot.

(b) Pricing for the cost of a T-hangar shall be based on the size of the hangar and calculated by multiplying the square footage x cost per square foot.

Section 4. Tie-down Fees. (1) Tie-down and parking rent fees shall be set at a fixed price consistent with the average rate for tie-down spaces at other airport facilities in the geographical area.

(2) Transient aircraft shall be charged a nightly rate for tie-down storage. The fee for the first night shall be waived if fuel or other purchases at the airport exceed the tie-down fee.

(3) The fee for a transient aircraft shall be based on the schedule of rates, charges, fees, and rents in the Capital City Airport's Schedule of Service Fees.

Section 5. Building and Office Lease. (1) Fees for building or office lease shall be set at a fixed price per square foot of the leased space.

(2) The fee shall be calculated pursuant to the guidelines established by the Finance and Administration Cabinet in State Facility Rent and Utility Rates on the State Budget Director's Web site at <http://osbd.ky.gov/kbud.htm>.

Section 6. Payment. (1) Rent may be paid to the airport in one (1) of the following ways:

(a) Issuance of a check made payable to the Kentucky State Treasurer; or

(b) Use of a major credit card.

(2) Rent shall be paid as detailed in the tenant's lease and as established in paragraphs (a) and (b) of this subsection. Rent shall be paid:

(a) Annually in full with the first annual payment on or before the date the lease begins with subsequent payments yearly on the anniversary date of the lease; or

(b) Monthly installments payable at the beginning of each month.

Section 7. Adjustment of Rates and Charges. (1) The airport shall review the rates and charges in effect at the airport and compare them with rates and charges in effect at non state-owned airports in the geographical region prior to the beginning of each fiscal year.

(2) The airport may adjust the rates and charges in effect at the airport following the review established in subsection (1) of this section.

(3) The airport shall provide to a lessee not less than thirty (30) days written notice of an adjustment in the rates and charges.

(4) The airport manager may waive ground support fees for:

(a) An organization or person engaged in a non-profit aeronautical program or activity that benefits a charitable organization or community; or

(b) A high volume fuel customer who purchases a minimum of 300 gallons or more of aviation fuel.

Section 8. Aviation Fuel. (1) The airport shall have the exclusive right and control of the sale of aviation fuel sold at the airport.

(2) The selling price for aviation fuel sold at the airport shall be based on:

(a) Weekly wholesale price;

(b) Applicable state and federal taxes; and

(c) A survey of aviation fuel prices at similar airports in the geographical region.

Section 9. Ground Support. (1) Ground support services offered by the airport shall include:

(a) Heating of aircraft engine;

(b) Power assistance to start engine;

(c) Aircraft towing; and

(d) Use of forklift.

(2) A fee for a ground support service shall be consistent with the average rate or charge for identical or similar services at airports in the geographical area.

Section 10. State Aircraft Usage Fees. (1) The costs of operating the state aircraft program for state officials and employees shall be recouped by the CCAD.

(2) Aircraft costs shall be calculated annually to compute an operating cost per flight hour.

(3) Calculations shall be based on a three (3) to five (5) year average of:

- (a) Fixed costs;
- (b) Periodic costs; and
- (c) Variable costs.

(4) The formulas established in paragraphs (a) and (b) of this subsection shall be used to calculate the annual cost of operation for each aircraft and to determine the hourly cost of operation rate.

(a) $(\text{Annual Variable Costs}) + (\text{Annual Fixed Costs}) + (\text{Annualized Periodic Cost}) = \text{Total Annual Cost of Operation}$.

(b) $(\text{Total Annual Cost of Operation}) + (\text{Annual Hourly Usage}) = \text{Total Hourly Cost of Operation}$.

(5) Hourly fees charged for usage of aircraft owned and operated by the Kentucky Department of Aviation are available on the Capital City Airport Web site at <http://cca.ky.gov/ccadivision.htm>.

(6) Insurance for state aircraft shall be covered by an aviation liability insurance policy obtained and coordinated through State Risk and Insurance Services.

Section 11. Measurement of Flight Time for State Aircraft. (1) The measurement of flight time shall depend on the type of aircraft.

(2) Flight time for a helicopter shall be measured with a Hobbs meter.

(3) Flight time for an airplane shall be measured from its takeoff roll until the airplane arrives at its destination and shall be computed in hours and tenths.

Section 12. Billing for Usage of State Aircraft. (1) A state agency using an aircraft shall be billed for the associated costs after each flight.

(2) Billing shall be based on the hourly cost of operation and the hours the aircraft was used regardless of the number of passengers.

(3) If repositioning the aircraft to accomplish the intended flight is necessary, a customer shall be charged for the flight time required to reposition the aircraft.

(4) If it is necessary to fly without passengers in order to accommodate a customer's schedule, that time shall also be included in the charge.

(5) A bill shall be paid by the user of a state aircraft within thirty (30) days of service pursuant to KRS 45.453.

Section 13. Penalties. (1) An interest penalty of five (5) percent shall be assessed each thirty (30) day billing cycle that an account remains in arrears.

(2) A delinquent account shall be referred for legal action after ninety (90) days.

(3) A party aggrieved by the findings of the airport may request an administrative hearing. The request shall be in writing and postmarked within twenty (20) days of the notice.

(a) A request for a hearing shall detail the grounds on which the hearing is requested.

(b) The hearing request shall be addressed to the Transportation Cabinet, Department of Aviation, 200 Mero Street, Frankfort, Kentucky 40622. The administrative hearing shall be conducted pursuant to KRS Chapter 13B.

GREG THOMAS, Secretary

STEVE S. PARKER, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: July 26, 2017

FILED WITH LRC: August 4, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2017 at 11:00 a.m. Eastern Time at the Kentucky Transportation Cabinet, Room C-106, 200 Mero Street, 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 through September 30, 2017. 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: Ann Dangelo, Assistant General Counsel, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Ann.Dangelo@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hangar fees, tie-down fees, fees for fuel and lubricants, fees for aircraft services, and usage fees for state aircraft at the Capital City Airport.

(b) The necessity of this administrative regulation: KRS 174.504 requires the Capital City Airport to promulgate administrative regulations to establish user fees for services and facilities of the airport.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the fees specifically required by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform the public of the fees in place at the airport for the use of aircraft and facilities.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments effected by this administrative regulation: This administrative regulation affects private and corporate pilots who use the airport as well as state agencies such as the Kentucky State Police who use the flight line services and keep their fleet of aircraft at the Capital City Airport.

(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 using the airport and its services will be required to pay fees for use of the airport services and facilities including hangar fees, tie-down fees, fees for fuel and lubricants, and usage fees for state aircraft.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will be dependent on the type of service requested. For example, Section 3 of the administrative regulation concerns hangar fees and establishes the method of calculating costs incidental to that particular service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Airport services will be available to the entities.

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

There will not be any costs associated with implementing this administrative regulation.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds are required for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes the fees required by KRS 174.504.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, fees are established pursuant to KRS 174.504.

(9) TIERING: Is tiering applied? No. Tiering is not applied. All requests for usage of airport facilities and fuel will be handled 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? KYTC Department of Aviation, the Capital City Airport, and the Kentucky State Police who use the flight line services and keep their fleet of aircraft at the Capital City Airport.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 174.504

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should not be any noticeable affect on expenditures and revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately 1.6 million 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? Approximately 1.6 million dollars.

(c) How much will it cost to administer this program for the first year? There should not be any costs.

(d) How much will it cost to administer this program for subsequent years? There should not be any costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET Department of Workplace Standards Division of Wages and Hours (Repealer)

803 KAR 1:121. Repeal of 803 KAR 1:030 and 803 KAR 1:040.

RELATES TO: 2017 Ky. Acts ch. 3; KRS Chapter 337

STATUTORY AUTHORITY: Ky. Acts ch. 3

NECESSITY, FUNCTION, AND CONFORMITY: 2017 Ky. Acts ch. 3, also known as HB 3 from the 2017 legislative session, repealed KRS 337.505 to 337.550, Kentucky's prevailing wage statutes for public works projects or any portions thereof for which bids had not yet been awarded as of the effective date of the Act. As a result of the enactment of HB 3, 803 KAR 1:030 and 803 KAR

1:040 are without statutory authority and are no longer necessary. Accordingly, this administrative regulation repeals 803 KAR 1:030 and 803 KAR 1:040.

Section 1. The following administrative regulations are hereby repealed:

(1) 803 KAR 1:030, Hearings on prevailing wage determinations; and

(2) 803 KAR 1:040, Review of executive director's determination.

DERRICK K. RAMSEY, Secretary

ERVIN DIMENY, Commissioner

APPROVED BY AGENCY: July 18, 2017

FILED WITH LRC: July 18, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 25, 2017 at 10:00 a.m. in the Oscar Morgan Conference Room, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSONS: Brittany Thomas, Executive Administrative Secretary, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0960, fax (502) 564-2248, email BrittanyC.Thomas@ky.gov.; and Ervin Dimeny, Commissioner, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0977, fax (502) 564-2248, email Ervin.Dimeny@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Ervin Dimeny and Brittany Thomas

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance with 2017 Ky. Acts ch. 3 and KRS 13A.310, this administrative regulation repeals 803 KAR 1:030 and 803 KAR 1:040.

(b) The necessity of this administrative regulation: 2017 Ky. Acts ch. 3 repealed KRS 337.505 to KRS 337.550, Kentucky's prevailing wage statutes for public works projects or any portions thereof for which bids had not yet been awarded as of the effective date of the Act. As a result, 803 KAR 1:030 and 803 KAR 1:040 are no longer necessary or authorized. Therefore, this administrative regulation repeals 803 KAR 1:030 and 803 KAR 1:040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2017 Ky. Acts ch. 3 repealed KRS 337.505 to KRS 337.550, Kentucky's prevailing wage statutes for public works projects or any portions thereof for which bids had not yet been awarded as of the effective date of the Act. Accordingly, this administrative regulation is necessary to repeal 803 KAR 1:030 and 803 KAR 1:040.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is part of the cabinet's effort under Governor Bevin's Red Tape Reduction initiative to repeal obsolete and unnecessary regulations in accordance with KRS 13A.310.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative

regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 803 KAR 1:030 and 803 KAR 1:040 does not impact these entities.

(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 repeal of 803 KAR 1:030 and 803 KAR 1:040 does not impose any required actions upon these entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The repeal of 803 KAR 1:030 and 803 KAR 1:040 does not impose any costs upon these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 803 KAR 1:030 and 803 KAR 1:040.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 803 KAR 1:030 and 803 KAR 1:040.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of 803 KAR 1:030 and 803 KAR 1:040 does not impact any state or local governmental entities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2017 Ky. Acts ch. 3; KRS 13A.310.

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 state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

LABOR CABINET Department of Workplace Standards Division of Wages and Hours (Repealer)

803 KAR 6:011. Repeal of 803 KAR 6:010.

RELATES TO: 2017 Ky. Acts ch. 134, sec. 13; KRS 336.165

STATUTORY AUTHORITY: 2017 Ky. Acts ch. 134, sec. 13; KRS 336.165

NECESSITY, FUNCTION, AND CONFORMITY: 2017 Ky. Acts ch. 134, sec. 13 repealed KRS 336.165. KRS 336.165 required the Division of Wages and Hours to promulgate administrative regulations concerning grants-in-aid to labor-management organizations. Accordingly, this administrative regulation repeals 803 KAR 6:010.

Section 1. 803 KAR 6:010, Grants-in-aid to labor-management relations organizations, is hereby repealed.

DERRICK K. RAMSEY, Secretary

ERVIN DIMENY, Commissioner

APPROVED BY AGENCY: July 18, 2017

FILED WITH LRC: July 18, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 25, 2017 at 10:00 a.m. in the Oscar Morgan Conference Room, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 2017, 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 September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSONS: Brittany Thomas, Executive Administrative Secretary, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0960, fax (502) 564-2248, email BrittanyC.Thomas@ky.gov.; and Ervin Dimeny, Commissioner, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0977, fax (502) 564-2248, email Ervin.Dimeny@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Ervin Dimeny and Brittany Thomas

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance

2017 Ky. Acts ch. 134, sec. 13 and KRS 13A.310, this administrative regulation repeals 803 KAR 6:010.

(b) The necessity of this administrative regulation: 2017 Ky. Acts ch. 134, sec. 13 repealed KRS 336.165, the statutory authority for 803 KAR 6:010. Accordingly, this administrative regulation is necessary to repeal 803 KAR 6:010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2017 Ky. Acts ch. 134, sec. 13 repealed KRS 336.165, the statutory authority for 803 KAR 6:010. Accordingly, this administrative regulation is necessary to repeal 803 KAR 6:010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is part of the cabinet's effort under Governor Bevin's Red Tape Reduction initiative to repeal obsolete and unnecessary regulations in accordance with KRS 13A.310.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 803 KAR 6:010 does not impact these entities.

(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 repeal of 803 KAR 6:010 does not impose any required action upon the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The repeal of 803 KAR 6:010 does not impose any cost upon the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 803 KAR 6:010.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 803 KAR 6:010.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The repeal of 803 KAR 6:010 does not impact any state or local governmental entities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2017 Ky. Acts ch. 134, sec. 13 and KRS 13A.310.

(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 state or local government.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

804 KAR 6:020. Advisory opinions.

RELATES TO: KRS 241.020, 241.060

STATUTORY AUTHORITY: KRS 241.020, 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing procedures relative to the matters over which the board has jurisdiction. KRS 241.020 authorizes the department to issue advisory opinions and declaratory rulings related to KRS Chapters 241 to 244 and the administrative regulations promulgated under those chapters. This administrative regulation establishes the procedures and requirements for requesting advisory opinions and the process utilized by the department in responding to those requests.

Section 1. Definitions. (1) "Advisory Opinion" means a ruling by the Department that addresses questions or issues properly submitted for consideration.

(2) "Department" is the Department of Alcoholic Beverage Control as defined by KRS 241.010(21).

(3) "Person" is defined by KRS 446.010.

Section 2. Request for Advisory Opinion. (1) Any person may request, in writing, an advisory opinion concerning the application and interpretation of alcoholic beverage control statutes and administrative regulations with regard to a particular act or transaction that the requestor is taking or plans to take. Requests presenting a general question of interpretation, posing a hypothetical situation, involving the activities of third parties, or that implicate the subject of an investigation, pending case, or disciplinary action, shall not be considered.

(2) The department may issue an advisory opinion on its own initiative.

Section 3. Form of Request. (1) The request shall be submitted

on the Advisory Opinion Request Form and contain the following:

(a) A clear and concise statement of all facts relevant to the request;

(b) Citation to all applicable and relevant statutes, administrative regulations, decisions, orders, other written statements of law or interpretation, or any other persuasive or controlling authority that relates to the request;

(c) A clear and concise statement of each and every question to be addressed;

(d) The requestor's proposed response to each question presented, including a summary of the rationale for the proposed response;

(e) Any documentation, research, or other evidence related to the request; and

(f) A statement indicating whether, to the requestor's knowledge or belief, the requested questions or issues is pending before, under investigation by, or recently determined by any court of law or governmental entity.

(2) The request shall be signed by one (1) or more persons, with each signer's mailing address, telephone number, and email address clearly indicated. If a person signs on behalf of a corporation, limited liability company, association, or any other legal entity, the name of the entity, the address, telephone number, and email address of the entity or point of contact shall be included. The signer shall date the request.

(3) The request shall be submitted by mail or by email to the Commissioner of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, email abc.advisory@ky.gov.

(4) If the request is deficient as set forth in this administrative regulation, the requesting person shall be notified of the deficiency within ten (10) business days of receipt.

(5) If the request meets the criteria of this administrative regulation, the department shall assign the request an advisory opinion request (AOR) number and publish the request on the department's Web site.

Section 4. Consideration. (1) The department may schedule an informal meeting between the requestor, any interested persons, and department representatives to present information and discuss questions raised. A final decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the department shall consider:

(a) All material submitted with the request; and

(b) Comments received prior to issuance of the advisory opinion.

(3) In rendering an advisory opinion, the department may:

(a) Consult experts or other individuals with knowledge of the substance of the request;

(b) Require verification of information; and

(c) Request additional documentation from the requestor.

Section 5. Issuance or Refusal to Issue an Opinion. The department shall issue an advisory opinion within ninety (90) days after receipt of the request, unless one (1) of the following applies:

(1) Lack of jurisdiction over any of the questions or issues presented by the request;

(2) Any of the questions or issues presented are pending before a board, governmental entity, or court of law that may definitively decide the questions or issues;

(3) Any of the questions presented by the request would be more appropriately resolved in a different proceeding or forum;

(4) Any of the facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate;

(5) Any of the questions or issues raised in the request become moot;

(6) The request seeks a determination of the constitutionality of a statute, regulation, or practice;

(7) Issuance of an opinion will not be in the public interest; or

(8) The department extends the time period to issue advisory opinion.

Section 6. Written Comments on Request. (1) Any interested person or party may submit written comments concerning a request for an advisory opinion by using the Advisory Opinion Request Form and identifying the AOR number associated with the request.

(2) Written comments shall be submitted by mail or email in the manner outlined in Section 3 of this administrative regulation no later than fourteen (14) business days following the date the request is made public by the department.

(3) The department may extend the written comment period.

Section 7. Reconsideration. (1) The department may revise any advisory opinion if circumstances warrant a revision. In doing so, the department shall issue a revised opinion in the manner outlined in this administrative regulation, including an explanation of the rationale for the change or revision of the original opinion.

(2) Any person may request the department to reconsider or revise a published advisory opinion using the Advisory Opinion Request Form that identifies the AOR number associated with the published advisory opinion.

(3) The request for reconsideration shall be submitted by mail or email in the manner outlined in Section 3 of this administrative regulation no later than ten (10) business days following the publication of the opinion and contain the following:

(a) A clear and concise statement of the grounds for the reconsideration request;

(b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;

(c) Any statute, administrative regulation, document, order, or other statement of law or policy that supports the requested reconsideration with an explanation of the relevance of the material offered; and

(d) A statement of adverse impact, if any, resulting from the published advisory opinion.

Section 8. Publication of Advisory Opinions. (1) All advisory opinions shall be public. The department shall publish and maintain all advisory opinions. Publication shall be made by making a hard copy available for inspection and by placing the entire opinion on the department's Web site.

(2) An index of all final published advisory opinions shall be maintained by the Department. The index shall include the subject of each opinion, its publication date, and any changes effectuated by the opinion.

Section 9. Incorporation by Reference. (1) "Advisory Opinion Request Form", July 2017, is incorporated by reference.

(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/>.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2017 at 10:00 a.m., Eastern Time, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by September 21, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be

accepted through 11:59 p.m. on September 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Mercadante, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedure for requesting an advisory opinion from the department and the required contents of the written request. This regulation also establishes the department's obligation to respond to and publish requests for advisory opinions as well as the advisory opinion as issued.

(b) The necessity of this administrative regulation: House Bill 183 necessitates this regulation. As a result of HB 183, KRS 241.020 now allows for the department to issue advisory opinions and declaratory rulings. This administrative regulation establishes the requirements for making such a request and the department's processing of those requests.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.020(1) authorizes the department to issue advisory opinions and declaratory rulings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation establishes the procedure for requesting an advisory opinion from the department and the required contents of the written request. This regulation also establishes the department's obligation to respond to and publish requests for advisory opinions as well as the advisory opinion as issued.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control, all holders of the 16,000 plus licenses issued and regulated by the department, state and local government officials, and the general public.

(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 are not required to take any action as a result of the enactment of this regulation. This is a permissive regulation that allows for persons to submit requests for advisory opinions if they so desire. State and local government officials and the general public are also not required to take any action as a result of the enactment of this permissive regulation. The department will be required to process requests for and issue advisory opinions as a result of the enactment of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Although the costs associated with this regulation are unknown at this time, the department does not anticipate the need for additional employees. Instead, the department will be required to reallocate existing employee time and resources to properly process and respond to advisory opinion requests. There are no

associated costs for the department's licensees, other state or local officials, or for the general public in requesting an advisory opinion.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The ability to request advisory opinions from the department will afford current and prospective licensees the benefit of avoiding unnecessary expenses regarding changes to business models and activities. Prior to adjusting business models and activities, current and prospective licensees will be able to obtain advisory guidance to ensure compliance with alcoholic beverage control laws before making considerable expenditures. It is possible that the option to request advisory opinions may reduce the number of violations by licensees, resulting in fewer fines. The department will benefit from a formal process of issuing uniform guidance to licensees and the general public.

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

(a) Initially: There are no anticipated costs associated with the implementation of this regulation as existing resources can be allocated to implement this administrative regulation.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this regulation as existing resources can be allocated to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? All permanent and temporary holders of the licenses issued by the department, which may include cities and counties, will be impacted by this administrative regulation. Local alcoholic beverage control administrators will be positively impacted by this administrative regulation, as they will have access to uniform department guidance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.020(1) authorizes the department to issue advisory opinions and declaratory rulings.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The department will have to allocate necessary time and resources to properly respond to the requests. However, if entities request these opinions prior to acting, it may limit the number of violations investigated and processed by the department. If so, the time and resources can be redistributed appropriately. There is no cost associated with requesting an advisory opinion.

(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.

(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.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this regulation should be minimal, if any.

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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of August 14, 2017

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 14, 2017, at 1 p.m. in Room 149 of the Capitol Annex. Representative Upchurch, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the July 2017 meeting were approved.

Present were:

Members: Senators Perry Clark, Alice Forgy Kerr, Ernie Harris; and Julie Raque Adams, and Representatives Mary Lou Marzian, Jason Petrie, Tommy Turner and Ken Upchurch.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Jimmy Adams, Lauren Graves, Lisa Lang, Education Professional Standards Board; Megan Walton, State Board of Elections; Steve Hart, Board of Pharmacy; John Marcus Jones, Board of Alcohol and Drug Counselors; Amber Arnett, Steve Beam, Ron Brooks, Karen Waldrop, Department of Fish and Wildlife Resources; Aaron Keatley, Pete Goodman, Jon Maybriar, Department for Environmental Protection; William Codell, Miranda Denney, Department of Juvenile Justice; Todd Allen, Department of Education; Steve Humphress, Lee Walters, Department of Alcohol Beverage Control; Rebecca Baylous, Molly Nicol Lewis, Office of Health Policy; John Inman, Jill Lee, Robert Silverthorne Jr., Office of Inspector General; Lee Guice, Samantha McKinley, Department for Medicaid Services; Greg Dutton, Betty Whitaker, Kentucky Manufactured Housing.

The Administrative Regulation Review Subcommittee met on Monday, August 14, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

HIGHER EDUCATION ASSISTANCE AUTHORITY: Kentucky Educational Excellence Scholarship Program

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program. Becky Gilpatrick, director of student aid, and Melissa Justice, senior associate counsel, represented the authority.

In response to a question by Co-Chair Harris, staff stated that the staff suggested-amendment clarified graduation standards for supplemental awards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend Section 5 to delete an out-of-date, superfluous time frame reference; (3) to amend Section 7 to clarify graduation standards for a supplemental award; and (4) to amend Sections 1, 2, 4, 6, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates

16 KAR 2:020. Occupation-based career and technical education certification. Jimmy Adams, executive director; Lauren Graves, executive staff advisor; and Lisa Lang, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation.

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.

Advanced Certification and Rank

16 KAR 8:040. Ranking of occupation-based career and technical education teachers.

In response to questions by Co-Chair Harris, Mr. Adams stated that, with efforts to attract more teachers but ensure quality, content competency was paired with pedagogy. New teachers engaged in a two (2) year New Teacher Induction Program sponsored by the Kentucky Department of Education. The on-the-job induction program included teaching pursuant to a provisional certificate along with pedagogy coursework and opportunities to address concerns with colleagues. Prospective teachers were required to meet a rigorous list of criteria prior to the provisional certificate. Ms. Lang stated that the New Teacher Institute tried, but was unable in some cases, to begin teaching training prior to commencement of the school year.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:010. Voter identification cards. Megan Walton, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

31 KAR 4:040. Procedures for absentee voting in county clerk's office.

Help America Vote Act 2002

31 KAR 6:020. Provisional voting.

GENERAL GOVERNMENT CABINET: Board of Pharmacy

201 KAR 2:076. Compounding. Steve Hart, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Alcohol and Drug Counselors

201 KAR 35:080. Voluntary inactive and retired status. John Marcus Jones, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:152 & E. Asian Carp and Scaled Rough Fish Harvest Program. Amber Arnett, counsel; Ron Brooks, fisheries director; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Co-Chair Harris, Mr. Brooks stated that there were not enough commercial fishermen to combat the Asian carp encroachment; therefore, this administrative regulation was being

amended to ease commercial fishing license fees. Kentucky had three (3) businesses currently operating to harvest and process Asian carp, but more were needed. Approximately two (2) million pounds of Asian carp was harvested annually, but Kentucky's goal was five (5) million pounds annually. The department was developing plans for a public – private partnership to more efficiently process Asian carp to ensure freshness, with the goal of increasing fishing pressure on the species to combat the encroachment. Asian carp was a popular food in Europe and Asia. It has the nutritional value of salmon, with less contaminants than any other Kentucky fish.

In response to a question by Co-Chair Upchurch, Mr. Brooks stated that the Asian carp invasion had exploded over the last five (5) to ten (10) years. Because the carp jumped and caused impediments to the recreational use of Kentucky waterways, the species was having a negative impact on tourism. The impact was expected to increase exponentially over the next five (5) years, with possibly devastating impacts to tourism in certain regions of Kentucky. The jumping of the Asian carp damaged boats and sometimes caused injuries.

301 KAR 1:195. Repeal of 301 KAR 1:192.

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Water Patrol

301 KAR 6:005. Boat registration fees.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:010. Definitions for 401 KAR Chapter 8. Peter Goodmann, executive director; Aaron Keatley, commissioner; and Jon Maybriar, executive director, represented the department.

In response to questions by Co-Chair Harris, Mr. Goodmann stated that the division had virtually eliminated backlogged permit processing over the last two and a half (2 ½) years. The extended deadline for certain facilities' permit processing was due to the complexity of engineering plans for water treatment facilities. The standing stakeholder workgroup, which met every other month, was apprised of this proposal and came to a consensus that the extended deadline was appropriate.

401 KAR 8:011. Repeal of 401 KAR 8:070, 401 KAR 8:101, 401 KAR 8:550, and 401 KAR 8:600.

401 KAR 8:020. Public and semipublic water systems; submetering; general provisions.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:040. Laboratory certification.

401 KAR 8:075. Consumer confidence reports and public notification.

401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make a technical correction; and (2) 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.

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, maximum contaminant levels, radionuclides,

and secondary standards.

Division of Waste Management: Solid Waste Planning

401 KAR 49:011. General provisions relating to area solid waste management plans.

A motion was made and seconded to approve the following amendment: to amend Section 3 for clarity. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

401 KAR 49:091. Repeal of 401 KAR 49:040, 401 KAR 49:090, and 401 KAR 49:210.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services community. William Codell, attorney, and Miranda Denney, deputy commissioner, represented the department.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Learning Support Services

704 KAR 7:051. Repeal of 704 KAR 7:050. Todd Allen, deputy general counsel, and Cassie Blausey, policy advisor, represented the department.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:230. Extended hours supplemental licenses. Steve Humphress, general counsel, and Lee Walters, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Local Administrators

804 KAR 10:010. Appointment notification of local administrator.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing. Rebecca Baylous, assistant general counsel of the Health Services Administrative Hearing Branch, and Molly Lewis, deputy general counsel and acting director of the Certificate of Need Program, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) revise one (1) definition and re-alphabetize; and (b) delete three (3) superfluous definitions; and (2) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:125. Certificate of need annual surveys. (Amended After Comments)

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers.

A motion was made and seconded to approve the following amendments: to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 7:040. Release of public data sets for health care discharge data.

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A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

Department for Public Health: Office of Inspector General: Controlled Substances

902 KAR 55:015. Schedules of controlled substances. John Inman, deputy inspector general, and Jill Lee, pharmacist consultant, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:040. Excluded nonnarcotic substances.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:041. Repeal of 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035.

902 KAR 55:095. Prescription for Schedule II controlled substance - authorization of oral prescription for immediate administration, facsimile transmission, or partial filing.

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; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Medicaid Services

907 KAR 1:041E. Repeal of 907 KAR 1:018 and 907 KAR 1:019. Lee Guile, director of policy and operations, and Dr. Samantha McKinley, pharmacy director, represented the department.

Payments and Services

907 KAR 3:066 & E. Nonemergency medical transportation waiver services and payments.

907 KAR 3:206E. Repeal of 907 KAR 3:205.

Outpatient Pharmacy Program

907 KAR 23:001 & E. Definitions for 907 KAR Chapter 23.

907 KAR 23:010 & E. Outpatient pharmacy program.

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; and (2) to amend Sections 4 and 11 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 23:020 & E. Reimbursement for outpatient drugs.

The following administrative regulations were deferred or removed from the August 14, 2017, Subcommittee agenda:

DEPARTMENT OF MILITARY AFFAIRS: Division of Administrative Services: Military Assistance Trust Funds

106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member.

GENERAL GOVERNMENT CABINET: Board of Embalmers and

Funeral Directors

201 KAR 15:030. Fees.

201 KAR 15:050. Apprenticeship and supervision requirements.

201 KAR 15:110. Funeral establishment criteria.

Board of Licensure for Occupational Therapy

201 KAR 28:200. Continuing competence.

201 KAR 28:235. Telehealth occupational therapy services.

PUBLIC PROTECTION CABINET: Office of Occupations and Professions: Board of Registration for Professional Geologists

201 KAR 31:010. Fees.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workplace Development: Office of Employment and Training: Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17:575. Pharmacy benefit managers.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Radon

902 KAR 95:040. Radon Contractor Certification Program.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:025. Technical requirements.

921 KAR 3:042. Supplemental Nutrition Assistance Program employment and training program.

The Subcommittee adjourned at 1:35 p.m. until September 11, 2017, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON NATURAL
RESOURCES AND ENERGY
Meeting of June 1, 2017**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of 6/1/2017, having been referred to the Committee on 5/3/2017, pursuant to KRS 13A.290(6):

301 KAR 2:132

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

June 1, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL
RESOURCES AND ENERGY
Meeting of July 6, 2017**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of 7/6/2017, having been referred to the Committee on 6/7/2017 and 7/6/2017, pursuant to KRS 13A.290(6):

301 KAR 2:075, 301 KAR 2:083, and 301 KAR 2:178 - referred on 6/7/2017

301 KAR 2:221, 301 KAR 2:300, and 301 KAR 3:022 - referred on 7/6/2017

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

July 6, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of July 6, 2017**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of July 6, 2017, having been referred to the Committee on June 7, 2017, pursuant to KRS 13A.290(6):

601 KAR 1:018

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 July 6, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of July 6, 2017, having been referred to the Committee on July 5, 2017, pursuant to KRS 13A.290(6):

601 KAR 1:113

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 July 6, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL
RESOURCES AND ENERGY
Meeting of August 2, 2017**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of

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8/3/2017, having been referred to the Committee on 8/2/2017, pursuant to KRS 13A.290(6):

301 KAR 2:222 and 301 KAR 2:225 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 2, 2017 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 AND FAMILY SERVICES Meeting of August 16, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of August 16, 2017, having been referred to the Committee on August 2, 2017, pursuant to KRS 13A.290(6):

201 KAR 20:070
201 KAR 20:110
201 KAR 20:225
201 KAR 20:480
901 KAR 5:061
901 KAR 5:120

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 16, 2017 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY Meeting of August 17, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of 8/3/2017, having been referred to the Committee on 8/2/2017, pursuant to KRS 13A.290(6):

787 KAR 2:040 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 2, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of August 28, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of August 28, 2017, having been referred to the Committee on August 2, 2017, pursuant to KRS 13A.290(6):

725 KAR 2:070

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 August 28, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

C - 2

The Locator Index lists all administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky* from July 2017 through June 2018. 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 that may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in VOLUME 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2017 *Kentucky Administrative Regulations Service* was published.

KRS Index

C - 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 44 of the *Administrative Register of Kentucky*.

Technical Amendment Index

C - 15

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2017 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index

C - 16

The Subject Index is a general index of administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
VOLUME 43					
The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			Amended	1802	6-21-2017
* Statement of Consideration not filed by deadline			201 KAR 20:070		
** Withdrawn, not in effect within 1 year of publication			Amended	2187	See 44 Ky.R.
*** Withdrawn before being printed in Register			201 KAR 20:110		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Amended	2189	See 44 Ky.R.
IJC Interim Joint Committee			201 KAR 20:225		
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			Amended	2191	8-16-2017
			201 KAR 20:480		
			Amended	2193	8-16-2017
			201 KAR 22:070		
			Amended	2022	See 44 Ky.R.
			201 KAR 26:125		
			Amended	1805	See 44 Ky.R.
			201 KAR 26:130		
			Amended	1807	See 44 Ky.R.
			201 KAR 26:140		
			Amended	1809	See 44 Ky.R.
			201 KAR 26:145		
			Amended	1811	See 44 Ky.R.
			201 KAR 26:155		
			Amended	1814	See 44 Ky.R.
			201 KAR 26:160		
			Amended	1816	See 44 Ky.R.
			201 KAR 26:165		
			Amended	1818	See 44 Ky.R.
			201 KAR 26:171		
			Amended	1819	See 44 Ky.R.
			201 KAR 26:175		
			Amended	1823	
			Reprint	2109	
			Am Comments	2156	See 44 Ky.R.
			201 KAR 26:180		
			Amended	1826	
			Am Comments	2158	See 44 Ky.R.
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			Amended	1827	See 44 Ky.R.
			201 KAR 26:190		
			Amended	1829	See 44 Ky.R.
			201 KAR 26:200		
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			201 KAR 26:225	1900	See 44 Ky.R.
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			Amended	1836	See 44 Ky.R.
			201 KAR 26:280		
			Amended	1838	See 44 Ky.R.
			201 KAR 26:290		
			Amended	1840	See 44 Ky.R.
			201 KAR 32:050		
			Amended	1841	See 44 Ky.R.
			201 KAR 32:060		
			Amended	1843	See 44 Ky.R.
			201 KAR 34:020		
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			201 KAR 34:030		
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			201 KAR 34:050		
			Amended	2029	See 44 Ky.R.
			201 KAR 39:001		
			Amended	1636	
			Am Comments	2160	See 44 Ky.R.
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787 KAR 2:040E	1922	3-31-2017			
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906 KAR 1:090					
Repealed	2086	7-17-2017			
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907 KAR 23:001	2088				
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907 KAR 23:020	2096	See 44 Ky.R.			
910 KAR 1:210					

----- SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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SYMBOL KEY:			Amended	113	
* Statement of Consideration not filed by deadline			31 KAR 6:020		
** Withdrawn, not in effect within 1 year of publication			Amended	114	
*** Withdrawn before being printed in Register			32 KAR 1:020		
‡ Withdrawn deferred more than twelve months (KRS			Amended	550	
13A.300(2)(e) and 13A.315(1)(d))			40 KAR 2:145		See 43 Ky.R.
IJC Interim Joint Committee			As Amended	9	8-4-2017
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an			40 KAR 2:150		See 43 Ky.R.
administrative regulation that repeals another, the regulations			As Amended	10	8-4-2017
compiler shall delete the repealed administrative regulation			45 KAR 1:030		
and the repealing administrative regulation.			Amended	258	
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(Note: Emergency regulations expire 180 days from the date filed;			Amended	260	
or 180 days from the date filed plus number of days of requested			45 KAR 1:050		
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922 KAR 1:490E	203	6-29-2017	Amended	265	
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			Amended	554	
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			Amended	270	
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			As Amended	217	8-16-2017
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			201 KAR 26:130		See 43 Ky.R.
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900 KAR 11:010	472		‡ Withdrawn deferred more than twelve months (KRS		
901 KAR 5:120		See 43 Ky.R.	13A.300(2)(e) and 13A.315(1)(d))		
As Amended	223	8-16-2017	IJC Interim Joint Committee		
902 KAR 2:060		See 43 Ky.R.	(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an		
As Amended, IJC	97	6-21-2017	administrative regulation that repeals another, the regulations		
902 KAR 20:360			compiler shall delete the repealed administrative regulation		
Amended	371	7-17-2017	and the repealing administrative regulation.		
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TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *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/KAR/frntpage.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

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103 KAR 18:060	6-22-2017		
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