



ADMINISTRATIVE REGISTER OF KENTUCKY

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

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet December 13, 2017, at 1:00 p.m. in room 149, Capitol Annex. **Tentative Agenda** **1205**
Regulation Review Procedure **1208**
ARRS Report..... **1461**
Other Committee Reports **1470**

INDEXES

Locator Index - Effective Dates **F-2**
KRS Index..... **F-11**
Technical Amendments **F-20**
Subject Index..... **F-21**

EMERGENCIES

NONE

AS AMENDED

Registry of Election Finance

[32 KAR 1:020](#). Statement of spending intent and appointment of campaign treasurer. .. 1209

Department of Revenue

[103 KAR 1:120](#). Employee access to federal tax information (FTI). 1209
[103 KAR 31:050](#). Returned merchandise..... 1211
[103 KAR 31:180](#). Signature project refunds on construction costs. 1211
[103 KAR 31:200](#). Energy efficiency projects. 1212
[103 KAR 44:060](#). Motor vehicle usage tax valuation. 1212
[103 KAR 44:070](#). Taxation of loaner and rental motor vehicles..... 1213
[103 KAR 44:100](#). Procedures for refund based on vehicle condition. 1214

Board of Pharmacy

[201 KAR 2:380](#). Board authorized protocols. 1215

Board of Licensure for Occupational Therapy

[201 KAR 28:200](#). Continuing competence. 1216
[201 KAR 28:235](#). Telehealth occupational therapy services. 1219

Board of Licensed Professional Counselors

[201 KAR 36:030](#). Continuing education requirements.... 1220
[201 KAR 36:050](#). Complaint management process..... 1222
[201 KAR 36:060](#). Qualifying experience under supervision..... 1223
[201 KAR 36:065](#). Licensed professional clinical counselor supervisor..... 1224
[201 KAR 36:070](#). Application, education, and examination requirements..... 1225
[201 KAR 36:072](#). Reciprocity requirements for applicants licensed or certified in another state..... 1228

Department of Agriculture

[302 KAR 17:010](#). Requirements for operating and inspecting aerial recreational devices and facilities..... 1229

Department for Environmental Protection

[401 KAR 39:005](#). Definitions for 401 KAR Chapter 39. .. 1232
[401 KAR 39:060](#). General requirements. 1244
[401 KAR 39:080](#). Hazardous waste handlers. 1249

[401 KAR 39:090](#). Hazardous waste permit program. 1250
[401 KAR 39:120](#). Permit review, determination timetables, and fees. 1256
[401 KAR 45:060](#). Special waste permit-by-rule. 1258
[401 KAR 48:005](#). Definitions related to 401 KAR Chapter 48..... 1259
[401 KAR 48:090](#). Operating requirements for contained landfills. 1265
[405 KAR 7:001](#). Definitions for 405 KAR Chapter 7. 1268
[405 KAR 7:095](#). Assessment of civil penalties. 1272
[405 KAR 8:001](#). Definitions for 405 KAR Chapter 8. 1274
[405 KAR 8:010](#). General provisions for permits. 1280
[405 KAR 8:040](#). Underground coal mining permits. 1291
[405 KAR 8:050](#). Permits for special categories of mining. 1303
[405 KAR 10:001](#). Definitions for 405 KAR Chapter 10. .. 1307
[405 KAR 12:001](#). Definitions for 405 KAR Chapter 12. .. 1309
[405 KAR 16:001](#). Definitions for 405 KAR Chapter 16. .. 1310
[405 KAR 16:110](#). Surface and groundwater monitoring. 1315
[405 KAR 18:001](#). Definitions for 405 KAR Chapter 18. .. 1316
[405 KAR 18:010](#). General provisions..... 1321
[405 KAR 18:040](#). Casing and sealing of underground openings..... 1322
[405 KAR 18:060](#). General hydrologic requirements. 1323
[405 KAR 18:110](#). Surface and groundwater monitoring. 1326
[405 KAR 18:260](#). Other facilities..... 1327
[405 KAR 20:001](#). Definitions for 405 KAR Chapter 20. .. 1327
[405 KAR 20:080](#). In situ processing. 1330
[405 KAR 20:090](#). Underground only permits. 1331
Department for Natural Resources
[805 KAR 1:060](#). Plugging wells 1331
Department of Housing, Buildings and Construction
[815 KAR 15:010](#). Definitions for 815 KAR Chapter 15.... 1334
[815 KAR 15:025](#). New installations, general design, construction, and inspection criteria for boilers, pressure vessels, and pressure piping. 1335
[815 KAR 15:026](#). Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors. 1341
[815 KAR 15:027](#). Fees and certificates for boiler and pressure vessel inspection..... 1343
Office of Health Benefit Exchange
[900 KAR 5:020](#). State Health Plan for facilities and services. 1345

<u>902 KAR 55:110</u>	Monitoring system for prescription controlled substances.	1346
Department for Public Health		
<u>902 KAR 95:040</u>	Radon Contractor Certification Program.	1348
<u>902 KAR 100:180</u>	Technologically enhanced naturally occurring radioactive material related to oil and gas development.	1350
Department for Medicaid Services		
<u>907 KAR 1:102</u>	Advanced practice registered nurse services.	1352
<u>907 KAR 1:104</u>	Reimbursement for advanced practice registered nurse services.	1355
Department for Community Based Services		
<u>922 KAR 1:430</u>	Child protective services in-home case planning and service delivery.	1357
<u>922 KAR 1:470</u>	Central registry.	1358
<u>922 KAR 5:040</u>	Standards for state-funded domestic violence shelters.	1359
<u>922 KAR 5:090</u>	General adult services.	1361

AMENDED AFTER COMMENTS

Board of Pharmacy		
<u>201 KAR 2:390</u>	Third-party logistics provider.	1363
Board of Board of Nursing		
<u>201 KAR 20:065</u>	Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.	1364

PROPOSED AMENDMENTS

Kentucky Higher Education Assistance Authority		
<u>11 KAR 4:080</u>	Student aid applications.	1367
Kentucky Educational Excellence Scholarship Program		
<u>11 KAR 15:090</u>	Kentucky Educational Excellence Scholarship (KEES) program.	1368
Personnel Board		
<u>101 KAR 1:325</u>	Probationary periods.	1374
Board of Hairdressers and Cosmetologists		
<u>201 KAR 12:010</u>	Administrator's duties.	1376
<u>201 KAR 12:100</u>	Sanitation standards.	1378
Board of Nursing		
<u>201 KAR 20:095</u>	Retired nurse licensure status.	1381
<u>201 KAR 20:400</u>	Delegation of nursing tasks.	1382
Board of Medical Imaging and Radiation Therapy		
<u>201 KAR 46:010</u>	Definitions for 201 KAR Chapter 46. ..	1384
<u>201 KAR 46:020</u>	Fees.	1386
<u>201 KAR 46:035</u>	Practice standards, scopes of practice, and ethical standards.	1388
<u>201 KAR 46:081</u>	Limited x-ray machine operator.	1390
Department of Fish and Wildlife Services		
<u>301 KAR 5:010</u>	License agent applications and agreements.	1393
<u>301 KAR 5:020</u>	License agent requirements and responsibilities.	1394
Department of Corrections		
<u>501 KAR 6:280</u>	Risk and needs assessment.	1396
Law Enforcement Council		
<u>503 KAR 1:140</u>	Peace officer, telecommunicator, and court security officer professional standards.	1398
Department of Highways		
<u>603 KAR 5:025</u>	Fully controlled access highways.	1405
Department of Insurance		
<u>806 KAR 18:030</u>	Group health insurance coordination of benefits.	1407
Department of Financial Institutions		
<u>808 KAR 3:050</u>	Conduct.	1410
Office of Health Policy		
<u>900 KAR 6:130</u>	Certificate of Need criteria for physician exemption.	1413

Office of Inspector General		
<u>902 KAR 20:016</u>	Hospitals; operations and services.	1415
Department for Medicaid Services		
<u>907 KAR 17:005</u>	Definitions for 907 KAR Chapter 17.	1428
<u>907 KAR 17:010</u>	Managed care organization requirements and policies relating to enrollees.	1432
<u>907 KAR 17:015</u>	Managed care organization requirements and policies relating to providers.	1441
<u>907 KAR 17:020</u>	Managed care organization service and service coverage requirements and policies.	1446
<u>907 KAR 17:035</u>	External independent third-party.	1450

NEW ADMINISTRATIVE REGULATION

Education Professional Standards Board		
<u>16 KAR 1:016</u>	Standards for certified teacher leader.	1453
Board of Medical Imaging and Radiation Therapy		
<u>201 KAR 46:095</u>	Administrative subpoena.	1454
Department of Alcoholic Beverage Control		
<u>804 KAR 4:241</u>	Repeal of 804 KAR 4:240.	1455
Alcoholic Beverage Control Board		
<u>804 KAR 6:011</u>	Repeal of 804 KAR 6:010.	1457
Department of Insurance		
<u>806 KAR 18:011</u>	Repeal of 806 KAR 18:010.	1458
Department for Medicaid Services		
<u>907 KAR 17:026</u>	Repeal of 907 KAR 17:026 and 907 KAR 17:030.	1459

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

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 44, Kentucky Register, page 318 (short form: 44 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 2017 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

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

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Senate and House Members

Senator Jimmy Higdon
President Pro Tempore

Representative David W. Osborne
Speaker Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Representative Jonathan Shell
Majority Floor Leader

Senator Ray S. Jones II
Minority Floor Leader

Representative Rocky Adkins
Minority Floor Leader

Senator Dan "Malano" Seum
Majority Caucus Chair

Representative David R. Meade
Majority Caucus Chair

Senator Dorsey Ridley
Minority Caucus Chair

Representative Dennis Keene
Minority Caucus Chair

Senator Mike Wilson
Majority Whip

Representative Kevin Bratcher
Majority Whip

Senator Dennis Parrett
Minority Whip

Representative Wilson Stone
Minority Whip

David Byerman, Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Ernie Harris, Co-Chair
Representative Ken Upchurch, Co-Chair
Senator Julie Raque Adams
Senator Perry B. Clark
Senator Alice Kerr
Representative Mary Lou Marzian
Representative Jason Petrie
Representative Tommy Turner

Staff

Sarah Amburgey
Stacy Auterson
Emily Caudill
Betsy Cupp
Ange Darnell
Emily Harkenrider
Karen Howard
Carrie Klaber

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, December 13, 2017 at 1:00 p.m., Room 149, Capitol Annex

DEPARTMENT OF STATE
Registry of Election Finance

Reports and Forms

[32 KAR 1:045 & E](#). Election Finance Statement - State Executive Committee Building Fund. ("E" Expires 3-28-2018)

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

Income Tax; General Administration

[103 KAR 15:050](#). Filing dates and extensions.

Income Tax; Corporations

[103 KAR 16:240](#). Nexus standard for corporations and pass-through entities.

[103 KAR 16:360](#). Deductibility of the Massachusetts corporate excise tax and West Virginia business and occupations tax in computing a corporation's net income.

Income Tax; Withholding

[103 KAR 18:070](#). Supplemental wages and other payments subject to withholding.

Sales and Use Tax; Service and Professional Occupations

[103 KAR 26:120](#). Advertising agencies.

Sales and Use Tax; Miscellaneous Retailer Occupations

[103 KAR 27:180](#). Vending machines.

Sales and Use Tax; Miscellaneous Retail Transactions

[103 KAR 28:051](#). Leases and rentals.

Sales and Use Tax; General Exemptions

[103 KAR 30:235](#). Sales to the federal government.

Sales and Use Tax; Administration and Accounting

[103 KAR 31:030](#). Direct pay authorization.

[103 KAR 31:102](#). Rebate for governmental public facility.

[103 KAR 31:111](#). Sales and purchases for resale.

[103 KAR 31:170](#). Disaster area relief sales and use tax refunds.

Selective Excise Tax; Cigarettes

[103 KAR 41:120](#). Retention of records.

BOARDS AND COMMISSIONS
Board of Pharmacy

Board

[201 KAR 2:390 & E](#). Third-party logistics provider. ("E" expires 3-16-2018) (Amended After Comments)

[201 KAR 2:400 & E](#). Outsourcing facility. ("E" expires 3-16-2018) (Comments Received; SOC ext., due 11-15-2017)

Board of Hairdressers and Cosmetologists

Board

[201 KAR 12:082 & E](#). Education requirements and school administration. ("E" expires 4-11-2018)

Board of Nursing

Board

[201 KAR 20:065](#). Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder. (Comments Received; SOC due 11-15-2017)

Board of Alcohol and Drug Counselors

Board

[201 KAR 35:040](#). Continuing education requirements.

[201 KAR 35:055](#). Temporary registration or certification.

[201 KAR 35:070](#). Supervision experience.

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

Game

[301 KAR 2:075](#). Wildlife rehabilitation permit.

[301 KAR 2:081](#). Transportation and holding of live native wildlife.

Hunting and Fishing

[301 KAR 3:022](#). License, tag, and permit fees. (Not Amended After Comments)

[301 KAR 3:120](#). Commercial nuisance wildlife control.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice

Child Welfare

[505 KAR 1:130](#). Department of Juvenile Justice Policies and Procedures: juvenile services in community.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing

Certification of Title

[601 KAR 23:020](#). Military surplus vehicle.

Department of Aviation Airport Development

[602 KAR 15:030](#). Fees for services and facilities of the Capitol City Airport. (Deferred from October)

EDUCATION AND WORKFORCE DEVELOPMENT Kentucky Board of Education Department of Education

Office of Instruction

[704 KAR 3:370](#). Kentucky framework for personnel evaluation.

LABOR CABINET Department of Workplace Standards Division of Wages and Hours

Collective Bargaining and Arbitration

[803 KAR 3:051](#). Repeal of 803 KAR 3:051.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

Malt Beverage Equipment, Supplies, and Service

[804 KAR 11:010](#). Equipment and supplies.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Safety

Miner Training, Education and Certification

[805 KAR 7:020](#). Training and certification of inexperienced miners. (Not Amended After Comments) (Deferred from November)

[805 KAR 7:030](#). Annual retraining. (Not Amended After Comments) (Deferred from November)

[805 KAR 7:040](#). Training of newly employed miners. (Not Amended After Comments) (Deferred from November)

[805 KAR 7:050](#). Training of miners for new work assignments. (Not Amended After Comments) (Deferred from November)

[805 KAR 7:060](#). Program approval. (Not Amended After Comments) (Deferred from November)

Sanctions and Penalties

[805 KAR 8:030](#). Criteria for the imposition and enforcement of sanctions against certified miners. (Not Amended After Comments) (Deferred from November)

[805 KAR 8:040](#). Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises. (Not Amended After Comments) (Deferred from November)

[805 KAR 8:050](#). Criteria for the imposition and enforcement of sanctions against noncertified personnel. (Not Amended After Comments) (Deferred from November)

PUBLIC PROTECTION CABINET Department of Insurance

Motor Vehicle Repairs (No-fault)

[806 KAR 39:030](#). Kentucky No-Fault Form.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Benefit Exchange

Kentucky Health Benefit Exchange

[900 KAR 10:031](#). Repeal of 900 KAR 10:030 and 900 KAR 10:100. (Deferred from November)

Department for Medicaid Services Division of Policy and Operations

Payment and Services

[907 KAR 3:005](#). Coverage of physicians' services. (Amended After Comments) (Deferred from November)

[907 KAR 3:010](#). Reimbursement for physicians' services. (Amended After Comments) (Deferred from November)

Department for Community Based Services Division of Family Support

[921 KAR 2:040 & E](#). Procedures for determining initial and continuing eligibility. ("E" expires 3-28-2018)

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

[921 KAR 3:045](#). Issuance procedures.

[921 KAR 3:090 & E](#). Simplified assistance for the elderly program or "SAFE". ("E" expires 3-28-2018)

Division of Child Care

Daycare

[922 KAR 2:160 & E](#). Child Care Assistance Program. ("E" expires 3-28-2018)

[922 KAR 2:260 & E](#). Child care service appeals. ("E" expires 3-28-2018)

REMOVED FROM DECEMBER AGENDA

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Air Quality**

New Source Standards

[401 KAR 59:015](#). New indirect heat exchangers. (Comments Received; SOC ext., due 12-15-2017)

Existing Source Standards

[401 KAR 61:015](#). Existing indirect heat exchangers. (Comments Received; SOC ext., due 12-15-2017)

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice**

Child Welfare

[505 KAR 1:170](#). Department of Juvenile Justice Policies and procedures: Prison Rape Elimination Act of 2003 (PREA). (Comments Received; SOC ext., due 12-15-2017)

**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) (Deferred from September)

**EDUCATION AND WORKFORCE DEVELOPMENT
Kentucky Board of Education
Department of Education**

Charter Schools

[701 KAR 8:010](#). Charter school student application, lottery, and enrollment. (Comments Received; SOC due 12-15-2017)

[701 KAR 8:020](#). Valuation of charter school authorizers. (Comments Received; SOC due 12-15-2017)

[701 KAR 8:030](#). Charter school appeal process. (Comments Received; SOC due 12-15-2017)

[701 KAR 8:040](#). Conversion charter school petition, conversion, and operation. (Comments Received; SOC due 12-15-2017)

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.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended at ARRS, November 13, 2017)

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at November 13, 2017)

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)[(e)].

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 11/2017/08/2017 [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.

103 KAR 1:120. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 131.032, 131.081, 131.130, 131.190, 131.990

STATUTORY AUTHORITY: KRS 42.014, 131.032(2); ~~131.081, 131.130, 131.190~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.014 requires the Office of the Secretary to establish internal organization, functions and duties as necessary to fulfill the duties of the cabinet. KRS 131.032(2) requires the Department of Revenue to promulgate administrative regulations to establish requirements concerning criminal background investigations for employees, including contract staff, with access to or use of federal tax information (FTI)~~[requires each employee of the Department of Revenue, including contract staff, with access to or use of federal tax information (FTI) to submit to a criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation]~~. This administrative regulation establishes the guidelines to implement the requirements set forth in KRS 131.032 and Internal Revenue Service (IRS) Publication 1075.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies who have, or will likely have, access to federal tax information in their regular course of business.

(2) "Classified employee" is defined by KRS 18A.005(7).

(3) "Contract Staff" means an individual employed with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies that does not meet the definition of a classified employee with KRS Chapter 18A status.

(4)(3) "Criminal background investigation" means a local, state, or national fingerprint-supported criminal history background investigation performed in accordance with KRS 131.032. [(4) "Classified employee" is defined by KRS 18A.005(7).]

(5) "Department" is defined by KRS 131.010(2).

(6) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of FTI or confidential taxpayer information, unless the department determines there are mitigating circumstances that sufficiently remediate the existing risks~~[as determined by the department]~~.

(7) "Federally funded time-limited employee" is defined by KRS 18A.005(15).

(8) "Federal tax information" or "FTI" means a return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA) or any entity acting on behalf of the IRS pursuant to an Internal Revenue Code (IRC) Section 6103 (p)(2)(B) Agreement.

(9) "Responsible agency" means an office within the Cabinet, Department, or an entity under contract with the cabinet or department, that employs or offers employment to an individual in a position for which the job duties include access to FTI.

(10) "Unclassified employee" means an employee that meets the criteria established in KRS 18A.115.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Section 2. Requirement for Criminal Background Investigations. (1) The cabinet, department, or responsible agency shall require prospective or current employees, including contract staff, whose job duties include access to FTI, to submit to a fingerprint-based local, state, or national criminal background investigation as a condition of initial or continued employment:

(a) After the individual is offered a job but before they begin working; and

(b) At least one (1) time every ten (10) years thereafter.

(2) The cabinet, department, or responsible agency that requests a fingerprint-based local, state, or national criminal background investigation on behalf of a prospective or current employee shall incur all fees associated with the cost of each background investigation requested.

(3) The cabinet, department, or responsible agency shall not employ any person in a position for which job duties include access to FTI or confidential taxpayer information if the individual refuses to consent to a fingerprint-based state or national criminal background investigation.

(4) The cabinet, department, or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification. The cabinet, department, or responsible agency shall not employ or offer employment to an individual with a disqualifying offense listed in Section 1 of this administrative regulation or whose background investigation reveals any factor that bears upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information. The department shall have the sole discretion to determine if a prospective or current employee of the department is suitable to work in a position with access to FTI or confidential taxpayer information to ensure its protection and security in accordance with KRS 131.190, IRS Publication 1075, and Finance and Administration Cabinet Standard Procedure 6.1.2 entitled "Confidentiality of State and Federal Information".

Section 4. Individuals Ineligible to be Hired. The cabinet, department, or responsible agency may refuse to employ, contract with, or permit to work as an employee, any applicant that submits to a background investigation if one (1) or more of the following conditions apply:

(1)(a) The applicant refuses to provide photo identification;

(2)(b) The applicant fails to submit their fingerprints at an authorized collection site as directed, within five (5) business days of being offered employment;

(3)(c) Upon completion of the criminal background investigation, the cabinet or department receives notice that the applicant is found to have a disqualifying offense; or

(4)(d) Final and acceptable disposition of a criminal charge or offense related to a disqualifying offense is not provided to the department within sixty (60) days of fingerprint submission.

Section 5. Notice of a Disqualifying Offense and Appeals - Applicants. (1) The cabinet, department, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background investigation, the department shall refer the individual to the appropriate state or federal law enforcement agency.

Section 6. Notice of a Disqualifying Offense and Appeals – Current Employees. (1) A current employee with classified status found to have a disqualifying offense upon completion of the criminal background investigation may be:

(a) Immediately removed from duties with access to FTI or confidential taxpayer information;

(b) Immediately placed on administrative leave pending an internal review of the disqualifying offense; or

(c) Dismissed from employment **if/where** the nature of the disqualifying offense presents an immediate, serious, and irreparable risk to FTI or confidential taxpayer information if the employee's job duties require access to FTI or confidential taxpayer information.

(2) A cabinet or department classified employee whose background investigation reveals a disqualifying offense shall be eligible for reconsideration under an internal department review process and determination in accordance with KRS Chapter 18A.

(3) A cabinet or department classified employee may submit a written request for an internal employment reconsideration review to the Division of Human Resources no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2 of this administrative regulation.

(4) A cabinet or department classified employee who requests a reconsideration of dismissal may be retained on staff **[, at the discretion of the department,]** during the review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee is assigned duties that require access to FTI or confidential taxpayer information.

(5) The request for an internal employment reconsideration review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other relevant and mitigating circumstances regarding the offense;**[-]**

(b) Official documentation showing that all fines, including court-imposed fines, costs, or restitution, have been paid, or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(6) After review, the department may reverse the dismissal if the department determines that the disqualifying offense, along with any mitigating circumstances, does not bear upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information.

(7) No later than thirty (30) calendar days from receipt of the written request for the reconsideration review, the **cabinet, department, or responsible agency****[Appointing Authority]** shall notify the employee of the final determination of the reconsideration review by the department.

(8)(7) The employee may appeal the results of a reconsideration review to the Personnel Board in accordance with KRS 18A.095.

Section 7. Challenges to Criminal History Record Information.

(4) An individual subject to a criminal background investigation required by KRS 131.032 and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 8. Pardons, Diversions, and Expungements. An applicant, classified employee, unclassified employee, federally funded time-limited employee, or contract employee who has received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after successful completion of a diversion program, or has had a disqualifying offense expunged, shall not be barred from employment in a position with job duties that include access to or use of FTI or confidential taxpayer information, for reasons related to the underlying disqualifying offense(s).

DANIEL P. BORK, Commissioner

WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: September 14, 2017

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 13, 2017)

103 KAR 31:050. Returned merchandise.

RELATES TO: KRS 139.010

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to have all powers, rights, duties, and authority with respect to the assessment, collection, refunding, and administration of the taxes levied by KRS Chapter 139. This administrative regulation establishes requirements for returned merchandise.~~[To interpret the sales and use tax law as it applies to returned or defective merchandise.]~~

Section 1. "Gross receipts" and "sales price" ~~shall~~**[do]** not include the amount charged for merchandise returned by customers if:

- (1) The full sale price, including that portion designated as "sales tax" or "use tax" is refunded either in cash or credit; and
- (2) The customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned.

Section 2. Refunding or crediting the customer with the purchase price, less rehandling and restocking costs, shall constitute a refund or credit of the entire amount.~~[Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, are refunded or credited to the customer.]~~

Section 3. The records of the taxpayer ~~shall~~**[must]** clearly reflect and support the taxpayer's claim for all ~~these~~**[such]** deductions for merchandise returned for credit or refund.

Section 4. Articles of tangible personal property that are repossessed by the seller ~~shall not be classified~~**[may not be classed]** as returned goods.~~[See 103-KAR 31:040 for repossessed merchandise.]~~

Section 5. Credits or refunds allowed by sellers to consumers on account of defects in merchandise sold ~~shall~~**[may]** be excluded in the same manner as credits or refunds for returned merchandise.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 13, 2017)

103 KAR 31:180. Signature project refunds on construction costs.

RELATES TO: KRS 65.7045, 139.515, 154.30-010~~154.030-~~

010~~2008 Ky. Acts ch. 178, secs. 14, 18]~~

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes. KRS 139.515 requires sales tax refunds for qualified signature projects. This administrative regulation establishes requirements for a sales and use tax refund relating to a signature project.

Section 1. Definitions. (1) "Agency" is defined in KRS 65.7045(2).

(2) "Approved public infrastructure costs" is defined by KRS 154.30-010(3)~~154.030-010(3)]~~~~2008 Ky. Acts ch. 178, sec. 14(3)]~~.

(3) "Approved signature projects costs" is defined by KRS 154.30-010(4)~~154.030-010(4)]~~~~154.030-010(4)]~~~~2008 Ky. Acts ch. 178, sec. 14(4)]~~.

(4) "Commencement date" is defined in KRS 65.7045(8).

(5) "Fiscal year" means the Commonwealth of Kentucky's accounting period, which begins every July 1 and ends on June 30 of the following year.

(6) "Purchaser" means the contractor, subcontractor, or other entity that purchases tangible personal property used in the construction of a signature project.

(7) "Signature project" is defined by KRS 139.515(1)(b) and 154.30-010(26)~~154.030-010(26)]~~~~2008 Ky. Acts ch. 178, sec. 14(26)]~~.

(8) "Tangible personal property used in the construction of a signature project" is defined in KRS 139.515(1)(c).

(9) "Vendor" means an individual or entity from whom tangible personal property used in the construction of a signature project is purchased.

Section 2. Refund Application Requirements. (1) Requests for refunds shall be filed with the Department of Revenue annually by the agency within the sixty (60) day timeframe as provided for in KRS 139.515 and shall only cover purchases made after the "commencement date" of the project grant agreement.

(2) Refund requests shall be postmarked, electronically submitted, ~~or,~~**[]** if delivered by messenger, hand-stamped by the department by the date required and shall include the following:

~~[(4)]~~**(a)** Application for Kentucky Signature Project Sales and Use Tax Refund, Form 51A291;

~~(b)~~ Information Sharing and Assignment Agreement for Designated Refund Claims, Form 51A290. The agency shall cause to be executed a separate Information Sharing and Assignment for Designated Refund Claims for every purchaser and vendor relationship. Each agreement shall be submitted to the Department of Revenue with the first request for refund that includes the purchaser vendor relationship filed after the execution of the agreement. Only one (1) agreement shall be required for each vendor and purchaser relationship for the life of the signature project;

~~(c)~~ Expenditure Report for Signature Project Refunds, Form 51A292, from each purchaser detailing all "tangible personal property used in the construction of the signature project" and the total corresponding Kentucky sales and use tax paid;

~~(d)~~ Sample invoices between each purchaser and vendor; and

~~(e)~~ The percentage of each purchaser's "tangible personal property used in the construction of the signature project" not included in the project grant agreement as approved public infrastructure costs or approved signature project costs.

Section 3. Record-Keeping Requirements. The approved agency shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided ~~by~~**[for in]** KRS 139.720. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.515.

Section 4. Forms. The forms listed herein may be inspected,

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(3) The department Web site at <http://revenue.ky.gov>.~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Kentucky Signature Project Sales and Use Tax Refund", Form 51A291 (October, 2007);~~

~~(b) "Expenditure Report for Signature Project Refunds", Form 51A292 (October, 2007); and~~

~~(c) "Information Sharing and Assignment Agreement for Designated Refund Claims", Form 51A290 (October, 2007).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 13, 2017)**

103 KAR 31:200. Energy efficiency projects.

RELATES TO: KRS 139.010, 139.518, 139.720

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710~~[139.170]~~ authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes KRS 139.518 establishes the sales and use tax refund provisions for energy efficiency products used at manufacturing plants. This administrative regulation establishes requirements for a sales and use tax refund relating to an energy efficiency project.

Section 1. Definitions. (1) "Energy efficiency project" is defined by KRS 139.518(1).

(2) "Manufacturing" is defined by KRS 139.010(16)(8).

(3) "Plant facility" is defined by KRS 139.010(21)(44).

Section 2. Efficiency Requirements. To calculate the fifteen (15) percent reduction of energy or energy-producing fuels, the decrease in energy consumption shall be based on the total energy consumed within all combined manufacturing at one (1) plant facility.

Section 3. Refund Application Requirements. (1) The applicant shall file a completed Application for Preapproval for Energy Efficiency Machinery or Equipment, Form 51A300, with the Department of Revenue along with energy and energy producing fuel consumption documentation within the timeframe required under KRS 139.518(4).

(2) Requests for the sales and use tax incentive shall be filed within the timeframe required by KRS 139.518(6)(a). The following completed documentation demonstrating achievement of the fifteen (15) percent energy efficiency threshold shall be submitted:

(a) Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive, Form 51A351;

(b) Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, Form 51A350. This agreement shall be completed and signed by the manufacturer, the vendor, and the

contractor as applicable; and

(c) Purchase invoices for the machinery and equipment for which a refund is being requested.

(3) To be considered valid, all applications and other documents required shall be postmarked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required~~[to qualify for consideration]~~.

(4) The applicant shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.518.

Section 4. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(3) The department Web site at <http://revenue.ky.gov>.~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Preapproval for Energy Efficiency Machinery or Equipment", Form 51A300, June 2008;~~

~~(b) "Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive", Form 51A350, June 2008; and~~

~~(c) "Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive", Form 51A351, June 2008.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 13, 2017)**

103 KAR 44:060. Motor vehicle usage tax valuation.

RELATES TO: KRS 138.450-138.470

STATUTORY AUTHORITY: KRS 131.130(1), 138.460(12)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations for the administration of all tax laws. This administrative regulation establishes the procedures to determine the retail value.~~[House Bill 74 enacted by the 1998 Kentucky General Assembly made significant changes in the valuation of motor vehicles for motor vehicle usage tax. KRS 138.460, as amended and effective August 1, 1998, authorizes the Department of Revenue to promulgate administrative regulations prescribing documentation necessary to carry out the provisions of HB 74.]~~KRS 131.130(1) authorizes the department to make administrative regulations for the administration of all tax laws.~~[This administrative regulation establishes the form and procedures required for the implementation of House Bill 74] and replaces emergency administrative regulation 103-KAR 44:060E].~~

Section 1. Definitions. (1) "Gift" means the transfer of a motor vehicle from one (1) party to another for no consideration or nominal consideration.

(2) "MSRP" means the manufacturer's suggested retail price.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Section 2. The following special valuation procedures shall be followed:

(1) For purposes of establishing retail price for used motor vehicles if[when] a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be the average retail value as listed in the appropriate automotive reference manual[manuals] prescribed in Section 3 of this administrative regulation.

(2) For purposes of establishing retail price for used motor vehicles whose values do not appear in the automotive reference manual prescribed by the department, and if[when] a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be determined by the department based upon relevant, available information.

(3) For purposes of establishing retail price for used vehicles of the current model year for which an average retail value has not been published in one of the reference manuals prescribed by the department, retail price shall be eighty-five (85) percent of the MSRP, including the MSRP of all equipment and accessories, standard and optional, and transportation charges.

Section 3. The following automotive reference manuals shall be followed for the valuation of the motor vehicles contained therein for motor vehicle usage tax, listed in order of prescribed use:

- (1) Automobiles and light trucks:
 - (a) NADA Official Used Car Guide®;
 - (b) NADA Official Older Used Car Guide; or[and]
 - (c) NADA Classic Collectible and Special Interest Car Appraisal Guide.
- (2) Other trucks: NADA Official Commercial Truck Guide®.
- (3) Miscellaneous vehicles:
 - (a) NADA Recreational Vehicle Appraisal Guide;
 - (b) NADA Van/Truck Conversion and Limousine Appraisal Guide; or[and]
 - (c) NADA Motorcycle/Snowmobile/ATV/Personal Watercraft Appraisal Guide.
- (4) General use: Automotive Invoice Service New Car Cost Guide.

Section 4. (1) If an affidavit of total consideration given is not available and a retail price based on MSRP is prescribed by statute, a copy of the window sticker or other documentation from the manufacturer showing MSRP and listing the base price, all equipment and accessories, standard and optional, and transportation charges shall be provided to the county clerk when a new automobile is presented for registration.

(2) An itemized statement showing the MSRP of any additional equipment and accessories installed by the dealer and not reflected on the window sticker shall also be provided to the county clerk.

(3) If the manufacturer's documentation does not include complete MSRP information, the department shall obtain MSRP information from available sources.

(4) If the manufacturer's invoice to the dealer does not contain MSRP information, the dealer shall provide the county clerk a copy of the manufacturer's invoice and provide an itemized list of all equipment and accessories, whether installed by the manufacturer or dealer, plus transportation charges.

(5) Taxable valuation shall then be determined through the use of MSRP information listed in this section provided in the price reference manual, prescribed in Section 3 of this administrative regulation, or other source of MSRP information.

Section 5. Forms. (1) The department forms applicable to this regulation are:

(a) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle"; and

(b) Revenue Form 71F001, "Kentucky's Taxation of Motor Vehicles for Motor Vehicle Usage Tax".

(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(b) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(c) The department Web site at <http://revenue.ky.gov>. [Incorporation by Reference. (1) The following items are incorporated by reference:

(a) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", October 1998.

(b) Revenue Form 71F001, "Kentucky's Taxation of Motor Vehicles for Motor Vehicle Usage Tax", December 1998.

(2) These documents may be inspected, copied, or obtained at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 13, 2017)**

103 KAR 44:070. Taxation of loaner and rental motor vehicles.

RELATES TO: KRS 131.180, 138.450-138.470, 138.990

STATUTORY AUTHORITY: KRS 131.130(1), 138.4605(4)[138.460]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. KRS 138.4605(4) requires[138.460 authorizes] the department to promulgate administrative regulations prescribing forms and procedures to collect the tax due on loaner or rental motor vehicles. This administrative regulation establishes those forms and procedures.

Section 1. Definitions. (1) "AVIS" means the Automated Vehicle Information System prescribed by KRS Chapter 186A.

(2) "Department" is defined by KRS 131.010(2).

(3) "Due date" means the date by which a report and payment of loaner or rental tax due is required to be[shall] be submitted to the department.

(4) "Eligible taxpayer" means a motor vehicle dealer licensed under KRS 190.010 who in the course of business loans or rents designated motor vehicles exclusively to customers of their service or repair components.

(5) "Loaner or rental motor vehicle" is defined by KRS 138.450(13).

(6) "Month" means a calendar month or any portion of a calendar month.

Section 2. Reporting and Payment Requirements. (1) [On or after July 15, 2002,] Any eligible taxpayer who has vehicles dedicated as loaner or rental motor vehicles shall:

(a) Register with the department utilizing Revenue Form 73A054;

(b) Provide the county clerk with their dealer number as issued by the Kentucky Motor Vehicle Commission; and

(c) Provide to the department a listing of all vehicles designated as loaner or rental motor vehicles including the vehicle identification number, license plate number, make, model, and model year.

(2) [Vehicles registered pursuant to KRS 138.4605 as in effect prior to July 15, 2002 shall automatically become subject to the amended provisions of KRS 138.4605 effective July 15, 2002 unless the dealer:

(a) Immediately transfers the vehicle out of the dealer's

~~name; or~~

~~(b) Elects to pay the regular motor vehicle usage tax on the retail price of the vehicle.~~

~~(3) On or after July 15, 2002,~~ Any registered eligible taxpayer who wishes to designate a vehicle as a loaner or rental motor vehicle shall advise the county clerk of this designation when the vehicle is first registered or transferred to the dealer. The county clerk shall enter the dealer number and appropriate exception code, provided by the department, in the AVIS computer system. The motor vehicle usage tax shall not be collected by the county clerk. The taxpayer shall also notify the department of the addition of the vehicle to the loaner or rental program when the next monthly report is submitted.

~~(3)/(4)~~ If a dealer transfers a vehicle out of inventory to be used in the loaner or rental program, ~~the dealer~~~~he~~ shall notify the department of the transfer to the loaner or rental program when the next monthly report is submitted.

~~(4)/(5) On or after July 15, 2002,~~ Any registered eligible taxpayer who has vehicles identified to the department as loaner or rental motor vehicles shall submit to the department on a monthly basis a report of the number of these vehicles utilizing Revenue Form 73A055 and remit payment of twenty-five (25) dollars per vehicle with the report, pursuant to KRS 138.4605.

~~(5)/(6)~~ The due date of the report and payment shall be fifteen (15) calendar days after the last day of the reporting month.

~~(6)/(7)~~ Penalties provided in KRS 131.180 and 138.990 shall apply to any late report or payment.

Section 3. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(3) The department Web site at <http://revenue.ky.gov>. [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 73A054 "Kentucky Application For Dealer Loaner/Rental Vehicle Tax", July 2002; and

(b) Revenue Form 73A055 "Monthly Report For Dealer Loaner/Rental Vehicle Tax", July 2002.

(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 13, 2017)**

103 KAR 44:100. Procedures for refund based on vehicle condition.

RELATES TO: KRS 138.450 -138.470

STATUTORY AUTHORITY: 131.130(1), 138.450, 138.460

NECESSITY, FUNCTION AND CONFORMITY: KRS 138.460(12)(b) requires the Department of Revenue to promulgate administrative regulations to develop the forms and the procedures by which the owner of a motor vehicle may apply for a refund and document the condition of the vehicle under KRS 138.460(12)(a). KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. This administrative regulation establishes the procedures required for claiming and documenting a refund request for motor

vehicle usage tax when the tax paid was based upon fifty (50) percent of trade-in value as provided in KRS 138.450(16)(a) and the actual condition of the vehicle at the time the usage tax was paid was less than fifty (50) percent of the trade-in value.

Section 1. Definitions. (1) "Adjusted retail price" means, for a motor vehicle subjected to motor vehicle usage tax pursuant to the provisions of KRS 138.450(16)(a), the price based upon the following calculation:

(a) Trade-in value based on the reference guide for the motor vehicle listed on the Vehicle Condition Refund Application (71A010);

(b) Less the trade-in value based on the reference guide for any motor vehicle given in trade; and

(c) Less any repair cost listed in the vehicle condition verification documents submitted to the department.

(2) "Reference manual" is defined by KRS 138.450(23).

(3) "Repair cost" means costs or estimates for parts or labor to return the motor vehicle to trade-in value or drivable condition, ~~except for~~~~and does not include~~ upgrading or improving the vehicle beyond trade-in value condition.

(4) "Vehicle condition verification documents" means originals or copies of the following dated items:

(a) Photographs of the vehicle supplied by the motor vehicle owner or the Department of Revenue that:

1. Are taken by the owner or Department of Revenue personnel;

2. Indicate the condition of the vehicle; and

3. Show the vehicle damage and the VIN plate attached to the vehicle;~~Photographs of the vehicle indicating the condition of the vehicle supplied by the motor vehicle owner or by Department of Revenue personnel. The photo shall show the vehicle damage and the VIN plate attached to the vehicles. Photos shall be taken by the owner or the Department of Revenue personnel;~~

(b) Copies of receipts for parts purchased for repair~~that~~~~Receipts for parts purchased for repair. Copies of receipts shall~~ contain the name of the parts purchase, the price of the parts, the name, address, and telephone number of the business where purchased, and the date of purchase;

(c) Copies of repair cost estimates that~~Repair cost estimates. Copies of estimates shall~~ contain the VIN of the vehicle being repaired, the date the estimate was prepared, and the name, address, and telephone number of the estimate preparer; or

(d) Copies of repair cost receipts that~~Repair cost receipts. Copies of receipts shall~~ contain the VIN of the vehicle being repaired, the date the repair was rendered, and the name, address, and telephone number of the vehicle repairer.

(5) "Vehicle Identification Number" or "VIN" means the numbers, letters, or combination of numbers and letters assigned by the manufacturer or a governmental entity and stamped upon or otherwise affixed to a motor vehicle or motor vehicle part for the purpose of identification, ~~except for~~~~but does not include~~ the letters, numbers, or combinations on registration plates issued under KRS Chapter 186.

Section 2. Refund Application Process. (1) The owner of a motor vehicle who has paid the motor vehicle usage tax according to the provisions of KRS 138.450(16)(a) and requests a refund of a portion of the tax paid shall submit to the department a completed Vehicle Condition Refund Application (Form 71A010) with the following documents attached:

(a) A copy of the owner's Kentucky Registration Receipt (Form TC 96-181) for the vehicle;

(b) A copy of the owner's completed Application for Kentucky Certificate of Title/Registration (Form TC 96-182) for the vehicle; and

(c) At least two (2) vehicle condition verification documents.

(2) All documents submitted with the Vehicle Condition Refund Application shall include the VIN to identify the motor vehicle for which the applicant is requesting the refund.

(3) The owner of the motor vehicle may utilize one of the department's Taxpayer Service Centers to obtain photographs of

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

the damaged vehicle and for submittal of the Vehicle Condition Refund Application.

Section 3. Refund Calculation Amount. (1) The department shall consider all refund requests based upon whether the condition of the motor vehicle at the time the motor vehicle usage tax was paid as evidenced by documentation provided to the department merits an adjusted retail price.

(2) Any approved refund shall be the actual amount of tax paid less the tax due based on the greater of the adjusted retail price or the applicant's purchase price as stated on the Application for Kentucky Certificate of Title or Registration~~[Kentucky Certificate of Title/Registration]~~ (Form TC 96-182).

Section 4. Refund Denial. Any incomplete or erroneous information on the Vehicle Condition Refund Application (Form 71A010) or the associated vehicle condition verification documents shall result in the denial of the refund. If the department has denied a refund request, the applicant may resubmit a refund request if additional information is made available.

Section 5. Forms. (1) The department forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(b) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(c) The department Web site at <http://revenue.ky.gov>.

(2) Form TC 96-181 and TC 96-182 listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet Forms Library Web site at <http://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library.aspx>, or by calling (502) 564-4610. [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Certificate of Title/Registration," Form TC 96-182, (January 2000);

(b) "Kentucky Registration Receipt," Form TC 96-181, (August 1996); and

(c) "Vehicle Condition Refund Application," Form 71A010, (August 2006).

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

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (As Amended at ARRS, November 13, 2017)

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010~~(25)~~~~(24)~~, 315.191(1)(a), (f)

STATUTORY AUTHORITY: KRS 315.010~~(25)~~~~(24)~~, 315.191(1)(a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010~~(25)~~~~(24)~~ defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the

dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of non-controlled medications or other professional services.

Section 1. Definition.~~[(1)]~~ "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. (1) A pharmacist~~[Pharmacists]~~ may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(a) A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation~~[as set forth by the board]~~ is in place, and is dated and signed by the prescriber and pharmacist~~[pharmacists]~~ authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services;

(b) The protocol has been approved by the board; ~~and~~and

(c) The pharmacist documents the dispensing event in the pharmacy management system, including:

1. Documentation as required by 201 KAR 2:170 for the dispensing of prescription medication; and

2. Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 4 of this administrative regulation.

~~[(2); and]; [(d)] Upon the request of an individual receiving care under a protocol, a pharmacist shall:~~

~~(a) Request the individual's primary care provider's information, if applicable; [provided one exists,] and~~

~~(b) [shall] Provide notification to the primary care provider within thirty (30) days of care.~~

Section 3. Minimum Requirements of Protocol. ~~[(1)]~~ Protocols shall contain the following elements:

~~[(1)](a)]~~ Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

~~[(2)](b)]~~ A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

~~[(3)](c)]~~ Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;

~~[(4)](d)]~~ Education to be provided to the person receiving the dispensed medications;

~~[(5)](e)]~~ Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber~~[physician]~~ signing the protocol, if requested;

~~[(6)](f)]~~ Length of time protocol is in effect;

~~[(7)](g)]~~ Date and signature of prescriber approving the protocol; and

~~[(8)](h)]~~ Dates and signatures of pharmacists authorized to initiate dispensing of medications or other professional services under the protocol.

Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board.

SCOTT GREENWELL, R.PH., President

APPROVED BY AGENCY: September 6, 2017

FILED WITH LRC: October 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 Licensure for Occupational Therapy
(As Amended at ARRS, November 13, 2017)**

201 KAR 28:200. Continuing competence.

RELATES TO: KRS 210.366, 319A.070(3)(d), 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070 (3) authorizes the board to promulgate administrative regulations and to establish the requirements for continuing competence. This administrative regulation[establishes] sets forth the requirements for licensees to demonstrate continuing competence.

Section 1. Definitions. (1) "CCU" means continuing competence unit.

(2) "Contact hour" means sixty (60) minutes engaged in a learning activity, excluding meal, breaks, and registration.

(3) "Continuance competence unit" means an assigned unit of measure for each continuing competence activity for which the values are given in Section 3 of this administrative regulation.

(4) "Continuing competence" means a dynamic, multidimensional process to develop and maintain the knowledge, skills, inter personal abilities, and critical and ethical reasoning necessary to perform occupational therapy professional responsibilities. Continuing competence activity for which the values are given in Section (5) of this administrative regulation.

(5) "Training program in suicide assessment, treatment, and management" means six (6) or more hours of continuing education pre-approved by the board that contains educational objectives set forth in [is defined by] KRS 210.366[(4)(b)].

Section 2. Continuing Competence Requirements. (1) A licensee applying for license renewal shall complete a minimum of twelve (12) CCUs of qualified activities for maintaining continuing competence during the preceding annual renewal period.

(2) A licensee who is issued a license for a period less than twelve (12) months shall prorate the number of CCUs to one (1) CCU for each month licensed.

(3) An applicant for reinstatement or licensure who was previously licensed by the board and whose license has been put on inactive status, revoked, or expired for three (3) years or less from the time the application is filed shall obtain twelve (12) CCUs of qualified activities for maintaining continuing competence for each year in which the license has been in the status prior to receiving the license.

(4) An applicant for licensure who was previously licensed by the board and whose license has lapsed for more than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence.

(5) At least once every six (6) years from date of initial license issue or from date of last completed [suicide] training program in suicide assessment, treatment, and management that is pre-approved by the board, each licensee shall complete a training program in suicide assessment, treatment, and management that is pre-approved by the board.[(c) A training program in suicide assessment, treatment, and management shall total six (6) hours of CCU and be approved by the board.]

Section 3. Qualified Activities for Maintaining Continuing Competence. The following activities qualify for the continuing competence requirements of this administrative regulation:

(1) Continuing education courses.

(a) A licensee may earn one (1) CCU for each contact hour in continuing education courses including workshops, seminars, conferences, electronic courses, or self-study courses.

(b) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the author or instructor;

2. Name of sponsoring organization and the location of the course; and

3. The number of contact hours attended.

(c) A training program in suicide assessment, treatment, and

management shall meet the requirements established in Section 2(5) of this administrative regulation[total six (6) hours of CCU and be approved by the board].

(2) Employer provided in-service training.

(a) A licensee may earn one (1) CCU for each contact hour of in-service training provided to the licensee by the licensee's employer.

(b) No more than six (6) CCUs of employer-provided training may be counted towards the total number of required CCUs. If an employer hosts continuing education courses open to practitioners outside of the organization, these courses shall fall under subsection (1) of this section.

(c) Training that deals with issues completely unrelated to the practice of occupational therapy that are required for employment compliance standards shall not be counted toward the continuing competence requirements.

(d) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the instructor;

2. Name of providing organization and the location of the course; and

3. The number of contact hours attended.

(e) In-service training is structured training that is offered to an employee and that is intended to maintain or enhance the employee's job performance or to meet requirements that are imposed on the employer by a credentialing body.

(3) Academic coursework.

(a) Participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy shall be counted towards the requirements of this administrative regulation.

(b) A licensee may earn six (6) CCUs per credit hour.

(c) Documentation for this activity shall include:

1. An official transcript indicating successful completion of the course and the date on which the course was taken; and

2. A description of the course from the school catalogue or course syllabus.

(4) Independent study.

(a) Independent study may include[includes] reading books, journal articles, reviewing videos, and activities of a similar nature.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent in an independent study activity.

(c) Documentation for this activity shall include:

1. Title, author, and publisher of the material;

2. The time spent on the material;

3. The date of completion; and

4. A statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(5) Mentorship.

(a) Credit may be earned by each participant in a formalized mentorship agreement defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities for the participants.

(b) A licensee may earn one (1) CCU for five (5) contact hours spent in activities directly related to achievement of goals and objectives under a mentorship agreement.

(c) Documentation for this activity shall include:

1. The name of mentor and mentee;

2. A copy of a signed agreement;

3. The dates, hours spent and focus of mentorship activities; and

4. A statement outlining the outcomes of mentorship agreement.

(6) Fieldwork supervision.

(a) Credit may be earned by participation as the primary clinical fieldwork educator for an OT or OTA fieldwork student.

(b) A licensee may earn one (1) CCU per forty (40) hours of supervision for each fieldwork student supervised.

(c) Documentation shall include:

1. A written verification from the school to the fieldwork educator with the name of student, school, and dates of fieldwork

or the signature page of the completed student evaluation form.

2. Evaluation scores and comments that are deleted or blocked out.

(7) Professional writing.

(a) Credit may be earned by the publication of a book, chapter, or article.

(b) A licensee may earn:

1. Twelve (12) CCUs as an author of a book;
2. Six (6) CCUs as an editor of a book;
3. Six (6) CCUs as author of a chapter;
4. Four (4) CCUs as author of a peer reviewed article;
5. Two (2) CCUs as author of a nonpeer reviewed article;

(c) Documentation for this activity shall consist of full reference for publication including, title, author, editor, and date of publication; or copy of acceptance letter if not yet published.

(8) Professional presentations and instruction.

(a) Credit may be earned by the presentation of academic guest lectures, state or national workshops or conferences, and employer-provided in-service training for OT/Ls or OTA/Ls.

(b) A licensee may earn two (2) CCUs for each hour of credit that is awarded for an activity.

(c) Documentation for this activity shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of that signed by the sponsor.

(9) Research.

(a) Credit may be earned for the development of or participation in extensive scholarly research activities or extensive outcome studies.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a research project.

(c) Documentation for this activity shall include verification from the primary investigator indicating the name of research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.

(10) Grants.

(a) Credit may be earned for the development of a grant proposal.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a grant proposal.

(c) Documentation for this activity shall include name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

(11) Professional meetings and activities.

(a) Participation in board or committee work with agencies or organizations in professionally related areas to promote and enhance the practice of occupational therapy may be counted toward the requirements of this administrative regulation.

(b) A licensee may earn one (1) CCU for five (5) contact hours on a committee or board.

(c) Documentation for this activity shall include:

1. The name of the committee or board, name of the agency or organization, purpose of service, and description of licensee's role; and

2. The participation shall be validated by an officer or representative of the organization or committee.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(12) Specialty certifications.

(a) The board shall recognize completion of activities that result in an advanced competence credential or specialty certification earned or recertified during the current renewal period.

(b) A licensee may earn up to twelve (12) CCUs for each advanced competence recognition or specialty certification credential earned or recertified during a renewal period.

(c) Documentation for this activity shall include a certificate of completion that identifies satisfactory completion of requirements for obtaining advanced competence recognition or specialty certification.

(13) Continuing competence plan.

(a) A licensee may earn two (2) CCUs for completion of activities related to the development and implementation of a continuing competence plan for professional development.

(b) Documentation for this activity shall include a signed document by the licensee attesting to the fact that he or she has used a formal assessment process which included the establishment of professional development goals and objectives and a portfolio approach to organize and document continuing competence activities related to the licensee's plan.

(14) Volunteer services.

(a) Credit may be earned by participation in volunteer services performed for organizations, populations, or individuals if the services maintain or enhance the licensee's competence in professional skills in the practice of occupational therapy.

(b) A licensee may earn one (1) CCU for each five (5) contact hours.

(c) Documentation for this activity shall include verification letter from organizations and report of outcomes of services provided.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

Section 4. Approval of Courses for Continuing Education Credit under Section 3(1) of this administrative regulation. (1) A continuing education course shall be current in subject matter and relevant to the practice of occupational therapy.

(2) A continuing education course under Section 3(1) of this administrative regulation shall qualify for credit under this administrative regulation if it is approved by one of the following methods:

(a) The board shall approve a course or provider of a course that is administered or approved by:

1. A recognized national, state, or local occupational therapy association;
2. An accredited health care organization or facility; or
3. An accredited college or university.

(b) A continuing education course provider who does not come within the provisions of paragraph (a) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers), at least ninety (90) days prior to the presentation of the course:

1. A thorough course description;
2. A statement of the projected learning outcomes;
3. A statement of the target audience;
4. The content focus of the course;
5. A detailed agenda for the activity;
6. A statement of the number of contact hours requested;
7. A listing of the presenters and their qualifications; and
8. A sample of the certificate of completion awarded to successful attendees.

(c) A licensee who does not come within the provisions of paragraph (a) or (b) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers):

1. A thorough course description;
2. A statement of the achieved learning outcomes;
3. The content focus of the course;
4. A detailed agenda for the activity;
5. A statement of the number of contact hours requested;
6. A listing of the presenters and their qualifications; and
7. A sample of the certificate of completion awarded to successful attendees.

Section 5. Waiver of Requirements. Under extenuating circumstances, the board may waive all or part of the continuing competence activity requirements of this administrative regulation if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the board of an illness, injury, family hardship, active military service, or other similar extenuating circumstance which precluded the individual's completion of the requirements on a case-by-case basis.

Section 6. Documentation and Reporting Procedures. (1) A licensee shall maintain the required proof of completion for each continuing competence activity as specified in this administrative regulation.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(2) The required documentation shall be retained by the licensee for a minimum of one (1) year following the last day of the license renewal period for which the continuing competence activities were earned.

(3) A licensee shall not send his or her continuing competence activity documentation to the board unless audited under Section 7 of this administrative regulation or otherwise requested by the board.

Section 7. Audit of Continuing Competence Activities. (1) The board shall perform a random audit of up to ten (10) percent of all licensees who shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period.

(2) A licensee who is audited shall respond to the audit within sixty (60) days of the date of the request.

(3) A licensee who fails to comply with the continuing competence activity requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 8. Other Provisions. (1) A licensee may not carry over continuing competence activity CCUs from one (1) licensure period to the next.

(2) A licensee may not receive credit for completing the same continuing competence activity more than once.

Section 9. Incorporation by Reference. (1) "Application for Continuing Education Program Approval (Course Providers)". September 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RHONDA EDWARDS, COTA/L, Board Chair

APPROVED BY AGENCY: June 13, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2017 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 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: Megan Woodson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-782-8807, fax 502-696-3853, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Megan Woodson; and Rhonda Edwards, phone 270-202-1701, email Rhonda.Edwards@ky.gov.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensees to demonstrate continuing competence.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.160 and 210.366.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.160(2) for the board to set a required

number of continuing education units for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for continuing competence units. Additionally, it sets forth the requirements for suicide training programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the regulation by clarifying continuing competence units provided through employer in-services and it outlines the procedures for suicide prevention training requisites based upon new statute requirements of KRS 210.336.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include the new suicide prevention training programs and to clarify continuing competence units obtained through employer in-services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.160(2) and 210.366 by defining procedures for obtaining suicide training education and outlining the procedures for obtaining continuing competence units.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the process of obtaining continuing competence units and the requirements related to suicide prevention training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated by KRS 319A.

(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 change requires licensees to obtain continuing education pertaining to suicide prevention training every six years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the cost of 6 hours of CE every six years which annualizes out to no more than \$20 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners will obtain evidence based training on the best methods for preventing suicide which can assist licensees in more effective interventions for clients.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A and set forth in this regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied for all licensees will be held to the same 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? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070 (3)(a)KRS 319A.070(3)(d), 319A.160;

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(As Amended at ARRS, November 13, 2017)**

201 KAR 28:235. Telehealth occupational therapy services.

RELATES TO: KRS 319A.080, 319A.300

STATUTORY AUTHORITY: KRS 319A.070, 319A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.300(2) requires the board to promulgate an administrative regulation to implement telehealth in occupational therapy, including to establish procedures to prevent abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of occupational therapy services and in the provision of continuing education. Additionally, KRS 319A.300(1) requires an occupational therapist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation establishes the requirements for telehealth for occupational therapy services.

Section 1. Definitions. (1) **"Client" means the person receiving the services of the occupational therapist.**

(2) "Telehealth is defined by KRS 319A.300(3).

(3)(2) "Telehealth occupational therapy" means the practice of occupational therapy as defined by KRS 319A.010(2), between the occupational therapist or occupational therapist assistant and the patient that is provided using:

(a) An electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using telehealth to deliver occupational therapy services shall, upon initial contact with the client:

(1) Make**reasonable** attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically **such as by the use of a telephone number or mailing address**;

(3) Provide to the client alternative means of contacting the credential holder other than electronically **such as by the use of a telephone number or mailing address**;

(4) Provide contact methods of alternative communication the credential holder shall use for emergency purposes such

as an emergency on call telephone number:

(5) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;

(6)(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications and;

(7)(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telehealth occupational therapy services;

(b) Potential risks to confidentiality of information, **or inadvertent access of protected health information**, due to technology in the provision of telehealth occupational therapy services;

(c) Potential risks of disruption in the use of telehealth occupational therapy services;

(d) When and how the credential holder will respond to routine electronic messages;

(e) In what circumstances the credential holder will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder**and**;

(h) How the credential holder stores electronic communications from the client; **and**

(i) How the credential holder may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

(1) Limit the practice of telehealth occupational therapy to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of telehealth occupational therapy through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Follow the record-keeping requirements of 201 KAR 28:140; and

(5) Ensure that confidential communications obtained and stored electronically **shall not/cannot** be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall comply with:

(1) State law where the credential holder is credentialed and be licensed to practice occupational therapy where the client is domiciled or adhere to standards set forth in 201 KAR 28:030; and

(2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 5. Representation of Services and Code of Conduct.

(1) A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

(a) Not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telehealth occupational therapy;

(b) Comply with 201 KAR 28:140; and

(c) Not allow fee-splitting through the use of telehealth occupational therapy services.

(2) Occupational therapy continuing competence educational processes established in 201 KAR 28:200, Section **3(3)**(1), (2), (3), (5), (8), and (11), may occur through telehealth services.

RHONDA TAPP EDWARDS, COTA/L, Board Chair

APPROVED BY AGENCY: June 13, 2017

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

CONTACT PERSON: Kelly Walls, Board Administrator,
Kentucky Board of Licensure for Occupational Therapy, PO Box
1360, Frankfort, Kentucky 40602, phone 502-782-8807, fax 502-
696-3853 email Megan.Woodson@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, November 13, 2017)**

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 13B, 194A.540, 210.366, 335.500-335.599

STATUTORY AUTHORITY: KRS 210.366, 335.515(3), (6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years. KRS 335.515(3), (6), and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his licensee. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

(3) A person holding a license shall complete a minimum of three (3) hours of continuing education in domestic violence within three (3) years of initial licensure, as required by KRS 194A.540.

(4) A person holding a license shall complete a minimum of six (6) hours of continuing education in a course in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management within the first year of licensure if the counselor:

1. Graduated from a Council for Accreditation of Counseling and Related Education Program since 2009; or

2. Completed a three (3) semester hours graduate course in suicide and crisis assessment, prevention, and intervention.

(b) A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the counselor satisfies one (1) of the following at least once per year during the six (6) year periodic requirement:

1. Is employed in a position that requires at least forty (40) hours of counseling in suicide and crisis assessment, prevention, and intervention;

2. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and intervention; or

3. Teaches a continuing education course in suicide and crisis assessment, prevention, and intervention.

(c) The continuing education course in suicide assessment, treatment, and management shall be board approved in accordance with Section 2 of this administrative regulation.

(d) An individual asserting an exemption of the suicide assessment, treatment, and management course shall maintain sufficient documentation to establish the exemption. Documentation listed in Section 5(3) of this administrative regulation shall be sufficient to establish the exemption.

(5) A person holding a license shall complete a minimum of three (3) hours of continuing education on the law for regulating

professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, every three (3) years. A person holding a license shall be exempt from this requirement if the person:

(a) Teaches a graduate-level course that includes KRS 335.500 to 335.599 and 201 KAR Chapter 36 during the three (3) year period; or

(b) Teaches a continuing education course on KRS 335.500 to 335.599 and 201 KAR Chapter 36 during the three (3) year period.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee's practice of professional counseling. They may be earned by completing any of the educational activities as established in this section. (1) Programs not requiring board review and approval.

(a) A continuing education program from any of the following providers shall be approved without further review by the board if it is:

1. Sponsored or approved by:

a. The American Counseling Association, or any of its affiliated branches or divisions;

b. The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

c. The American School Counselor Association or any of its affiliated state chapters; ~~or~~

d. The National Board for Certified Counselors; or

e. A state counseling licensure board; or

2. An academic course offered by an accredited post-secondary institution directly related to professional counseling or counseling psychology.

(b) A continuing education program not requiring board review and approval shall comply with the requirements of subsection (3) of this section and Section 4 of this administrative regulation.

(2) Programs requiring board review and approval. For approval purposes, the board shall review the following types of programs to determine relevancy:

(a) A program, approved by the board, of a service provider, including a home study course or in-service training provided by another organization or educational institution;

(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(c) An article authored by the licensee that was published in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

(3)(a) Supervision training under 201 KAR 36:065, Section 1(3), shall be presented by an instructor who is licensed by the board.

(b) The continuing education program on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, shall be presented by an instructor who is licensed by the board or an attorney who demonstrates knowledge of KRS 335.500 to 335.599 and 201 KAR Chapter 36 in the Continuing Education Program Application.

(4) Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for every one (1) academic credit hour.

(5) A general education course, whether elective or used to meet degree requirements, shall not be acceptable as continuing education credit.

Section 3. Procedures for Approval of Continuing Education Programs. In order to submit the course to the board for approval, the following shall be submitted:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee, and lunch breaks. The agenda shall state the specific time when each topic of the program is being presented;

(4) Number of continuing education hours requested;

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

(6) The Continuing Education Program Application; and

(7) If a provider is seeking approval for a continuing education course, an application review fee of twenty (20) dollars.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 3 of this administrative regulation on an annual basis for each program; or

(b) As a prior-authorized continuing education provider under Section 2(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs that meet or exceed all the requirements set forth in Section 1(2) of this administrative regulation; and

2. Does not exclude a licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of professional counseling;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

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

(b) Identify his own continuing education needs and seek activities that meet those needs;

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

(d) 1. Select approved activities by which to earn continuing education hours; or

2. Submit to the board a request for approval for continuing education activities not approved as required in Section 2(2) of this administrative regulation;

(e) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(g) Maintain records of continuing education hours.

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

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor; or

(d) Receipt for the fee paid to the sponsor.

(4) Compliance with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.540(1)(b) and shall result in sanctions in accordance with KRS 335.540(1).

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 6. Responsibilities and Reporting Requirements of

Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(3) of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 7. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the continuing education course provider or licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 8. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; and

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of License. (1)(a) Except as provided by paragraph (b) of this subsection, a person requesting reinstatement or reactivation of a license shall submit evidence of ten (10) hours of continuing education completed within one (1) year of the filing of reinstatement~~[the twelve (12) month period immediately preceding the date on which the request for reinstatement]~~ or reactivation~~[is submitted to the board]~~.

(b) Upon request by the applicant, the board may permit the applicant to resume practice if ten (10) hours of continuing education is obtained within ninety (90) days~~[three (3) months]~~ of the date on which the applicant is approved to resume practice.

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

Section 10. Hours required to satisfy the continuing education requirement shall be completed on or before the renewal date established in 201 KAR 36:075, Section 1. Failure to complete the continuing education requirement in Section 1 of this administrative regulation by the renewal date of a license shall require the applicant to submit a reinstatement application in accordance with 201 KAR 36:075.

Section 11. Incorporation by Reference. (1) "Continuing Education Program Application, KBLPC 007", June 2015 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: September 15, 2017

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

CONTACT PERSON: Kayla Mann, Board Administrator,
Division of Occupations and Professions, 911 Leawood Drive,
Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-
5836, email kayla.mann@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, November 13, 2017)**

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint; and

(c) May be filed by the board based upon information in its possession.

(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)(a) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5. (1) If the ~~board accepts the recommendation of the~~ complaint screening committee determines that a violation has occurred but is not serious, the ~~complaint screening committee may recommend the issuance of a private written reprimand to the board.~~ If the board accepts the recommendation, the board shall issue a private written reprimand[admonishment] to the credential holder.

(2) ~~(1)~~ A copy of the private written reprimand[admonishment] shall be placed in the permanent file of the credential holder.

(3) ~~A~~(2) private written reprimand[admonishment] shall not:

(a) Be subject to disclosure to the public under KRS 61.878(1)(l); or

(b) ~~and shall not~~ constitute disciplinary action.

(4) A private written reprimand[admonishment] may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

Section 6. [5.] If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 7. [6.] Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 8. [7.] Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and

(2) An action to restrain or enjoin a violation of KRS 335.505.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: September 15, 2017

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

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, November 13, 2017)**

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

Section 1. Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

- (a) The helping relationship, including counseling theory and practice;
- (b) Human growth and development;
- (c) Lifestyle and career development;
- (d) Group dynamics, process, counseling, and consulting;
- (e) Assessment, appraisal, and testing of individuals;
- (f) Social and cultural foundation, including multicultural issues;
- (g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
- (h) Research and evaluation; and
- (i) Professional orientation and ethics.

Section 2. Supervision. (1) A supervisor of record shall be licensed by the board as a licensed professional clinical counselor supervisor, except as established in this section.

(2) An LPCA Supervision Agreement that has been approved prior to the effective date of this administrative regulation may continue to be in effect until termination.

(3)(a) An applicant may submit a hardship request for the ability to utilize one (1) of the licensees listed in paragraph (b) of this subsection if the nature of the circumstances shows that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by the difficulty to do so. Circumstances showing difficulty in obtaining supervision may include engaging in the practice of counseling in a rural area where there is not a licensed professional clinical counselor within a fifty (50) mile radius, or active-duty military deployment. The submittal for a hardship exemption shall be accompanied by the LPCA Supervision Agreement.

(b) An applicant who demonstrates a hardship may request a supervisor who is properly credentialed under Kentucky law as a member of one (1) of the following professions:

1. A licensed professional clinical counselor that does not qualify as a supervisor under 201 KAR 36:065;

2. A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;
3. A licensed clinical social worker; or
4. A licensed marriage and family therapist.

Section 3. LPCA Supervision Agreement. (1) A supervisee shall enter into a written supervision agreement with an approved supervisor. The supervision agreement shall contain:

- (a) The name and address of the supervisee;
- (b) The name, address, license or certification number, and number of years of practice of the supervisor of record;
- (c) The name, address, license or certification number, and number of years of practice of other supervisors;
- (d) The agency, institution, or organization where the experience will be received;
- (e) A detailed description of the nature of the practice including the type of:
 1. Clients that will be seen;
 2. Therapies and treatment modalities that will be used including the prospective length of treatment; and
 3. Problems that will be treated;
- (f) The nature, duration, and frequency of the supervision, including the:
 1. Number of hours of supervision per week;
 2. Number of hours of individual supervision;
 3. Methodology for transmission of case information; and
 4. Number of hours of face-to-face supervision that meet the requirements of KRS 335.525(1)(e);
- (g) A statement that supervision:
 1. Shall occur a minimum of:
 - a. Three (3) times per month and one (1) hour per meeting for a full time practice that consists of twenty-five (25) clock hours or greater per week; or
 - b. One (1) hour for every thirty (30) hours of client contact for a part time practice that consists of less than twenty-five (25) clock hours per week; and
 2. May include interactive, simultaneous video and audio media with a minimum of one (1) direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room;
- (h) The conditions or procedures for termination of the supervision;
- (i) A statement that:
 1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and
 2. The supervisor of record meets the criteria established in Section 2 of this administrative regulation; and
- (j) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervision agreement, the supervisee shall submit a new supervision agreement, which sets forth the information required by this subsection and identifies the new supervisor of record.

(2) The supervision agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 4. Experience Under Supervision. (1) Experience under supervision shall consist of:

- (a) Direct responsibility for a specific individual or group of clients; and
- (b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may, for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one (1) monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(3) The board may approve an applicant's supervision hours obtained in another jurisdiction if:

(a) The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

(b) The supervisor of record meets the criteria established in Section 2 of this administrative regulation; and

(c) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervision agreement, the supervisee shall submit a new supervision agreement, which sets forth the information required by this subsection and identifies the new supervisor of record.

(2) The supervision agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 4. Experience Under Supervision. (1) Experience under supervision shall consist of:

- (a) Direct responsibility for a specific individual or group of clients; and
- (b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may, for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one (1) monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(3) The board may approve an applicant's supervision hours obtained in another jurisdiction if:

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(a) The supervision hours were approved by the jurisdiction's regulatory board who issued a license to be a licensed professional clinical counselor or its equivalent;

(b) The regulatory board for the jurisdiction who issued a license to be a licensed professional clinical counselor or its equivalent shall have approved the supervisor to supervise the applicant prior to the applicant obtaining supervision hours;

(c) The regulatory board for the jurisdiction where the supervision hours were obtained shall ~~certify~~certify that the supervision hours were approved and the supervisor of the ~~applicant~~application was board approved; and

(d) The supervision hours shall be obtained after the applicant received a master's, specialist, or doctoral degree in counseling or a related field used to satisfy KRS 335.025(1)(c).

Section 5. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the LPCA Supervision Agreement required by Section 3 of this administrative regulation are not followed; or

(b) The supervision agreement is terminated for any reason other than the extenuating circumstances that allow temporary supervision in Section 7 of this administrative regulation.

(3) If the terms of the supervision agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 6. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervision agreement required by Section 3 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor required by 201 KAR 36:070. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state; and

(c) Demonstrate that the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 7. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the temporary supervision of a qualified mental health provider as defined by KRS 202A.011(12) while an appropriate board-approved supervisor is sought and a new supervision agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within ten (10) days of the occurrence, the supervisee shall notify the board of the extenuating circumstances that have

caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision.

(c) The written plan shall include:

1. The name of the temporary supervisor;

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

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

4. A telephone number for the temporary supervisor.

(d) The temporary supervision arrangement shall expire after sixty (60) days of the establishment of the temporary supervision arrangement with a qualified mental health provider. The temporary supervision arrangement shall not be extended beyond the sixty (60) days.

Section 8. Incorporation by Reference.(1) The "LPCA Supervision Agreement", September, 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: September 15, 2017

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

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (As Amended at ARRS, November 13, 2017)

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

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e), 5(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study.] KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. KRS 335.525(5)(a) requires a licensed professional counselor associate to maintain ongoing supervision as approved by the board. This administrative regulation establishes the qualifications of a supervisor.[This administrative regulation establishes the requirements relating to who may provide qualifying supervision].

Section 1. Supervisor Qualifications. (1) To be a supervisor of a licensed professional clinical counselor or licensed professional counselor associate, an applicant shall:

(a) Submit a LPCC-S Application with supporting documentation that includes one (1) of the following:

1. A certificate or certificates from the fifteen (15) hour CEU course;

2. Two (2) years of board-approved supervision agreements to support the five (5) years of experience as a licensed professional clinical counselor supervisor; or

3. A copy of the syllabus as proof of completion of a supervision course;

~~(b) and:~~

~~(a)~~ Be licensed by the board as a licensed professional clinical counselor;

~~(c) [(b)]~~ Not have:

1. An unresolved citation filed against the applicant by the board that licenses or certifies that profession;
2. A suspended or probated license or certificate; or
3. An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;

~~(d) [(c)]~~ Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

~~(e) [(d) 1.]~~ Have taught or completed a:

1. Three (3) hour graduate level course in counseling supervision; or

2. ~~[A]~~ Fifteen (15) hour board-approved supervisor training course ~~[required by subsection (3) of this section].~~

(2) Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1) ~~(e) [(d)]~~ of this section.

(3) A three (3) hour graduate level course exclusively on counseling supervision or the board-approved supervisor training course shall:

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. ~~[Except as established in paragraph (c) of this subsection.]~~ Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including ~~[Kentucky laws governing the practice of counseling and]~~ counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) The board-approved supervisor training course shall be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(4) Licensed professional clinical counselors engaged in

training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for licensure at the same time.

Section 3. Incorporation by Reference. (1) "LPCC-S Application", ~~September~~ June 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: July 13, 2017

FILED WITH LRC: July 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, November 13, 2017)**

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

RELATES TO: KRS 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.527(1)(a) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution and sixty (60) graduate hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the application, education, and examination requirements for licensure.

Section 1. (1) Degree in Counseling. To qualify as a degree in counseling under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one (1) course in ~~each~~ a minimum of

seven–(7)] of the nine (9) content areas established in KRS 335.525(1)(d) or 335.527(1)(a);

2. Include three (3) semester hours or four and one-half (4.5) quarter hours, at the minimum, on professional orientation and ethics with the concentration on the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in clinical psychology, forensic psychology, psychology, Christian psychology, biblical counseling, pastoral counseling, marriage and family therapy, art or dance therapy, social work, criminal justice, or special education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 or, if that applicant is applying for endorsement, in each area listed in KRS 335.527(1)(a)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d) or, if that applicant is applying for endorsement, in all nine (9) of the content areas listed in KRS 335.527(1)(a).

(5) The graduate hour requirement of KRS 335.525(1)(d) and 335.527(1)(a) shall be semester hours. A minimum of ninety (90) quarter hours shall be equivalent to sixty (60) graduate semester hours.

Section 2. Accreditation. (1)(a) All coursework submitted for licensure shall be from a regionally accredited educational institution, which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or Western Association of Schools and Colleges.

(b) All coursework submitted for licensure from an international educational institution shall be accredited by the International Registry of Counseling Education Programs or reviewed by the World Education Services.

(2) An applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) or its affiliates. This requirement shall not apply to an applicant who:

(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;

(b) Maintains continuous enrollment; and

(c) Receives a degree in the counseling or a related field program no later than May 31, 2020.

Section 3. Examination. An applicant for licensure as a licensed professional clinical counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Application for Licensure. (1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:

1. Submit an Application for Licensed Professional Clinical Counselor to the board;

2. Pay the fee as established in 201 KAR 36:020;

3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation;

4. Complete at least three (3) semester hours or four and one half (4.5) quarter hours for each of the following curriculum content areas as:

a. The helping relationship, including theory and practice, which provides an understanding of counseling and consultation

processes, and includes the following:

(i) Counseling and consultation theories including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;

(ii) Basic interviewing, assessment, and counseling skills;

(iii) Counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations, and skills;

(iv) Client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences, verbal and nonverbal behaviors, and personal characteristics, orientations, and skills; and

(v) Ethical considerations;

b. Human growth and development that provides an understanding of the nature and needs of individuals at all developmental levels, and includes:

(i) Theories of individual and family development and transitions across the life span;

(ii) Theories of learning and personality development;

(iii) Human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors, normal and abnormal behavior;

(iv) Counseling strategies for facilitating development over the life span; and

(v) Ethical considerations;

c. Lifestyle and career development that provides an understanding of career counseling, development and related factors. Coursework includes the following:

(i) Career-counseling theories and decision-making models;

(ii) Career, vocational educational and labor market information resources; visual and print media and computer-based career information systems;

(iii) Career-counseling program planning, organization, implementation, administration, and evaluation;

(iv) Interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) Career and educational placement counseling, follow-up and evaluation; assessment instruments and techniques relevant to career counseling;

(vi) Computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(vii) Career-counseling processes, techniques, and resources, including those applicable to specific populations; and

(viii) Ethical considerations;

d. Group dynamics, process, counseling, and consulting that provides an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, and includes the following:

(i) Principals of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;

(ii) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) Group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;

(v) Approaches used for other types of group work in counseling, including task groups, prevention groups, support groups, and therapy groups; and

(vi) Ethical considerations;

e. Assessment, appraisal, and testing of individuals that provides an understanding of individual and group approaches to assessment and evaluation in counseling practice. Coursework includes the following:

(i) Theoretical and historical bases for assessment techniques in counseling;

(ii) Validity, including evidence for establishing content, construct, and empirical validity;

- (iii) Reliability, including methods of establishing stability, internal, and equivalence reliability;
- (iv) Appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;
- (v) Psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;
- (vi) Age, gender, ethnicity, language, disability, and cultural factors assessment and evaluation in counseling services;
- (vii) Strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling; and
- (viii) Ethical considerations;
- f. Social and cultural foundations, including multicultural issues that provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, and includes the following:
 - (i) Multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;
 - (ii) Attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity, culture, family patterns, gender, socioeconomic status, and intellectual ability;
 - (iii) Individual, family, and group counseling strategies with diverse populations; and
 - (iv) Ethical considerations;
- g. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior that provides an understanding of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior. Coursework includes the following:
 - (i) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), fifth (5th) edition, or the DSM currently in use;
 - (ii) Established diagnostic criteria for mental and emotional disorders, and treatment modalities and placement criteria within the continuum of care;
 - (iii) Etiology of addiction and co-occurring disorders and the impact of co-occurring substance use disorders on medical and psychological disorders;
 - (iv) Etiology, the diagnostic process and nomenclature, treatment, referral, and prevention of mental and emotional disorders; and
 - (v) Principles, models, and documentation formats of biopsychosocial case conceptualization and treatment planning;
- h. Research and evaluation is a course that provides an understanding of types of research methods, basic statistics, and ethical and legal consideration in research. Coursework includes the following:
 - (i) Basic types of research methods to include qualitative and quantitative research designs;
 - (ii) Basic parametric and nonparametric statistics;
 - (iii) Principles, practices, and applications of needs assessment and program evaluation;
 - (iv) Uses of computers for data management and analysis; and
 - (v) Ethical and legal considerations;
- i. Professional orientation to counseling is a course that provides an understanding of the professional counselor profession and provides an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Coursework includes the following:
 - (i) History of the counseling profession, including significant factors and events;
 - (ii) Professional roles and functions of counselors, including similarities and differences with other types of professionals;
 - (iii) Professional organizations (primarily the American Counseling Association (ACA), its divisions, branches, and affiliates), including membership benefits, activities, services to

members, and current emphases;

(iv) Ethical standards of the National Board of Certified Counselors (NBCC) or the ACA and related ethical and legal issues, and the applications to various professional activities (e.g., appraisal, group work);

(v) Professional counselor preparation standards, the evolution and current applications;

(vi) Professional counselor credentialing, including counselor certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; and

(vii) Public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele; and

[i-] Practicum or internship experiences shall be for a minimum of two (2) semester courses and provide supervised counseling experience in an appropriate clinical setting, which includes the following:

- (i) 600 clock hours of total experience;
- (ii) At least 240 clock hours of direct service, including experience leading groups;
- (iii) Weekly interaction that averages one (1) hour per week of individual or triadic supervision throughout the internship, usually performed by the onsite supervisor;
- (iv) An average of one and one-half (1 1/2) hours per week of group supervision provided on a regular schedule throughout the internship and performed by a licensed program faculty member;
- (v) The opportunity for the student to become familiar with a variety of professional activities and resources in addition to direct service (e.g., record keeping, assessment instruments, supervision, information and referral, in-service and staff meetings);
- (vi) The opportunity for the student to develop program-appropriate audio or video recordings for use in supervision or to receive live supervision of his or her interactions with clients; and
- (vii) Evaluation of the student's counseling performance throughout the internship, including documentation of a formal evaluation after the student completes the internship by a program faculty member in consultation with the site supervisor;

5. Submit the results of a background check performed within the last ninety (90) days by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation (**FBI**). If an applicant submits an application for a **nationwide criminal background[investigation] check performed by the FBI[Federal Bureau of Investigation (FBI)]** and the FBI cannot complete the background[investigation] check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and **shall** submit the performed nationwide criminal background[investigation] check within fourteen (14) days of its **receipt[completion]**. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant **shall not use the Optional Affidavit for Licensure. Any cases officially expunged do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this subparagraph. If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing**; and

6. Submit a copy of the course description or syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a)[(e)] if the degree in counseling or the degree in a related field is not from a CACREP accredited institution.

(b) If applying for licensure via endorsement for reciprocity, an applicant shall:

- 1. Meet the requirements in paragraph (a)1. and 2. of this subsection; and
 - 2. Submit an official transcript.
- (2) Each applicant for licensure as a licensed professional counselor associate shall:
- (a) Submit an Application for Licensed Professional Counselor Associate to the board;
 - (b) Pay the fee as established in 201 KAR 36:020;
 - (c) Submit an official transcript;
 - (d) Satisfy the requirements of subsection (1)(a)4. of this

section;

(e) Submit the results of a background check performed within the last ninety (90) days by the Kentucky State Police and a criminal background check performed by the ~~FBI~~Federal Bureau of Investigation. If an applicant submits an application for a nationwide criminal background~~investigation~~ check performed by the ~~FBI~~Federal Bureau of Investigation (FBI) and the FBI cannot complete the background~~investigation~~ check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and shall submit the performed nationwide criminal background~~investigation~~ check within fourteen (14) days of its ~~receipt~~completion. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure. Any cases officially expunged do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this paragraph. If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing; and

(f) Submit a copy of each syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a) if the degree in counseling or degree in a related field is not from a CACREP accredited institution.

Section 5. (1) An applicant for licensure shall be of good moral character. If an applicant lacks good moral character, the applicant has the duty to provide available evidence relative of rehabilitation.

(2) For evidence relative of rehabilitation, the board shall consider evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(3) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. (1) The board may approve remedial work to correct any deficiency to satisfy Sections 1 and 4 of this administrative regulation.

(2) The board shall not approve remedial work for degrees listed in Section 1(3) of this administrative regulation.

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

(a) "Application for Licensed Professional Clinical Counselor", ~~October~~January 2017;and

(b) "Application for ~~the~~Licensed Professional Counselor Associate", January 2017;and

(c) "Optional Affidavit for Licensure", June 2017.

(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.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: July 13, 2017

FILED WITH LRC: July 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, November 13, 2017)

201 KAR 36:072. Reciprocity requirements for applicants licensed or certified in another state.

RELATES TO: KRS 335.515(12)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

335.515(1) requires the board to evaluate the qualifications of applicants for licensure. KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(12) authorizes the board to enter into reciprocal agreements with certified or licensed professional counseling boards. This administrative regulation establishes the reciprocity requirements for certification or licensure of persons licensed or certified in another state.

Section 1. (1) The licensing requirements for a licensed professional clinical counselor under KRS 335.525 or 335.527 may be waived if:

(a) The board enters into a written reciprocity agreement with the other jurisdiction;

(b) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to licensees of that other jurisdiction;

(c) The board determines that the licensing requirements of the other jurisdiction are~~determined by the board to be~~ substantially similar to the requirements of KRS 335.500 to 335.599;

(d) The applicant holds an active valid license or certificate in the other jurisdiction;

(e) The applicant ~~is~~shall be in good standing in the other jurisdiction;

(f) The applicant ~~has not~~shall not have been disciplined or reprimanded;

(g) The applicant:

1. Does not have a pending disciplinary action; or

2. ~~Is~~ under investigation by any jurisdiction; and

(h) The applicant ~~is~~shall be of good moral character.

(2) No person shall be licensed as a licensed professional associate through reciprocity.

Section 2. An applicant seeking licensure as a licensed professional clinical counselor shall:

(1) Submit an Application for Licensed Professional Clinical Counselor ~~by~~through Reciprocity to the board;

(2) Pay the application fee as established in 201 KAR 36:020, Section 1(1);

(3) Submit a letter of good standing from each jurisdiction where the person holds a license or certificate; and

(4) Submit the results of a background check performed within the last ninety (90) days from the submission date of the application for a criminal background check performed by the Kentucky State Police and the Federal Bureau of Investigation (~~FBI~~). If an applicant submits an application for a nationwide criminal background~~investigation~~ check performed by the ~~FBI~~Federal Bureau of Investigation (FBI) and the FBI cannot complete the background~~investigation~~ check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure, as incorporated by reference in 201 KAR 36:070, and shall submit the performed nationwide criminal background~~investigation~~ check within fourteen (14) days of its ~~receipt~~completion. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure. Any cases officially expunged do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this subsection. If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing.

Section 3. An applicant granted a license under this administrative regulation shall comply with the continuing education requirements under 201 KAR 36:030 and the renewal requirements of 201 KAR 36:075.

Section 4. (1) The board, by majority vote and during a board meeting, shall determine ~~if~~that the licensing requirements of another jurisdiction ~~are~~is substantially similar to the requirements of KRS 335.500 to 335.599.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(2) The board may only approve a reciprocity agreement with another jurisdiction if Section 1(a), (b), and (c) of this administrative regulation are/is satisfied.

(3) The board shall publish the determination and approval of a reciprocity agreement in its board minutes.

Section 5. Incorporation by Reference. (1)~~[The board incorporates]~~ "Application for Licensed Professional Clinical Counselor by Reciprocity", November[August] 2017, is incorporated by reference.

(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.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: September 15, 2017

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

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of Consumer Protection
(As Amended at ARRS, November 13, 2017)

302 KAR 17:010. Requirements for operating and inspecting aerial recreational devices and facilities.

RELATES TO: KRS Chapter 247

STATUTORY AUTHORITY: KRS 247.238

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.238 requires the Department of Agriculture to establish requirements and standards for the operation and regulation of aerial recreational devices and facilities~~[promulgate administrative regulations to implement the provisions of KRS Chapter 247.238]~~. This administrative regulation establishes requirements and standards for the operation and inspection of aerial recreational devices and facilities.

Section 1. Definitions. ~~[The following words when used in this regulation shall mean:]~~

(1) "Aerial recreational device" is defined by KRS 247.238(1)(b).

(2) "Aerial recreational facility" is defined by KRS 247.238(1)(c).

(3) "Certificate of Inspection" means the Certificate of Inspection Form incorporated by reference in Section 15 of this administrative regulation that is[a document] signed by a qualified inspector ~~[on a form approved by the department]~~, certifying that an aerial recreation device is correctly installed.~~[;]~~

(4)~~[(2)]~~ "Department" means the Kentucky Department of Agriculture.~~[;]~~

(5)~~[(3)]~~ "Device malfunction" means a malfunction that affects the future use of the device.

(4)] "Engineer" means a person meeting the requirements for licensure as a Professional Engineer ~~[set forth]~~ in KRS 322.040, regardless of whether the person is licensed by the Kentucky Board of Engineers and Land Surveyors.

(6) "Equipment malfunction" means a malfunction that affects the future use of the aerial recreational device.[;]

(7)~~[(5)]~~ "First aid" means the treatment of injuries that do not ordinarily require medical treatment by a physician or other medical professional, including without limitation scratches, cuts not requiring stitches, superficial burns, splinters, and bruises.~~[;]~~

(8)~~[(6)]~~ "Major modification" means a change in the structural or operational characteristics of an aerial recreational[a] device that[which] will alter its weight-bearing capacity or alter its performance.~~[;]~~

(9)~~[(7)]~~ "Operator" means a person who owns, operates, or is deemed by the department to be responsible for an aerial recreational device or facility.~~[;]~~

(10)~~[(8)]~~ "Qualified inspector" means a person meeting the requirements ~~[set forth]~~ in Section 10 of this administrative regulation.~~[;]~~

(11)~~[(9)]~~ "Serious injury" means an injury requiring medical treatment other than first aid from a physician or other medical professional, regardless of whether or not the injury requires hospitalization.~~[;]~~

(12)~~[(10)]~~ "Zip line" means a type of aerial recreational device consisting of a cable stretched between two (2) or more points, a pulley, and a harness for securing a patron who moves by gravity.

Section 2. Licensure and Insurance Coverage Required for any Person Operating an Aerial Recreational Device or Facility for Any Commercial or Educational Purpose. (1) ~~A[No]~~ person shall not operate an aerial recreational device or facility for any commercial or educational purpose in the Commonwealth without holding a license issued by the department.~~[;]~~

(2) ~~A[No]~~ person shall not operate an aerial recreational device or facility in the Commonwealth without having an insurance policy in place that [meets the following requirements]:

(a) Was written by an insurance company or ~~[by]~~ surplus lines insurer authorized to do business in Kentucky;

(b) Includes general liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate;

(c) Insures the operator against liability for injury to persons arising out of the use of the aerial recreational device or facility; and

(d) Includes an express provision stating that the insurer shall not cancel the policy without providing thirty (30) days advance written notice to the department.

(3) Any aerial recreation device that meets the following criteria is not subject to this administrative regulation:

(a) The device is not operated for a commercial purpose; and

(b) The device is not operated for an educational purpose.

Section 3. Application for Licensure as an Operator. (1) Application Contents. An Aerial Recreational Device or Facility ~~[operator]~~ License Application Form shall be submitted annually and shall include the following:

(a) The applicant's name, residential address, telephone number, and email address;

(b) The name of the designer, and the serial number, for each aerial recreational device within the applicant's facility;

(c) A list of the anticipated locations~~[location(s)]~~ and dates of operation of the aerial recreational device or facility within Kentucky for the upcoming permit year;

(d) The name of the liability insurance carrier~~[carrier(s)]~~ and the insurance policy number~~[number(s)]~~, with reference to the specific policy page number where the thirty (30) day notice provision required by Section 2(2)(d) of this administrative regulation appears;

(e) A Certificate of Inspection, signed by a qualified inspector, certifying that each device was inspected and found to be installed in a correct manner and safe for use on a date not more than 365 days prior to the date of the application's submission;

(f) A certificate of liability insurance meeting the requirements set forth in Section 2(2) of this administrative regulation;

(g) A copy of the engineer-approved design plans for each device; except that the[provided, however, that no engineer-approved] plans shall not be required for a device for which the operator submits to the department a signed affidavit attesting that:

1.[(1)] The device was installed prior to July 15, 2016;

2.[(2)] The device has not been subject to any major modifications since July 15, 2016; and

3.[(3)] The device has been in use since July 15, 2016;

(h) A copy of the Risk Management Program required in Section 4(1)(e) of this administrative regulation; and

(i) Written authorization for the applicant's qualified inspector to communicate with and respond to any inquiry from a representative of the department, including an inquiry that calls for the production of documents pertaining to the applicant's devices.

(2) Application Review. Upon receipt of an application and the fees required by subsection (4) of this section, the department shall review the application. Upon determining that the

requirements ~~[set forth]~~ in subsection (1)~~[Section 3(1)]~~ of this section~~[administrative regulation]~~ have been met, the department shall approve the application, register the aerial recreational device or facility, and issue an operator license.

(3) Operator licenses issued by the department shall:

(a) Expire annually on December 31, regardless of date of application;

(b) Be specifically assigned to individual devices and facilities; and

(c) Not be transferred or assigned.

(4) Fees ~~;~~

(a) Except as provided by paragraph (b) of this subsection:

1. The annual operator license fee shall be \$100; and

2. ~~[(b)]~~ The annual device license fee shall be \$100 per aerial recreation device ~~;~~

~~[(b)]~~~~[(c)]~~ Application fees charged in connection with the licensure of any facility shall not exceed \$2,000 annually in the aggregate ~~;~~ and

~~[(c)]~~~~[(d)]~~ The fees established in this subsection~~[set forth in Section 4(4) of this administrative regulation]~~ shall be nonrefundable.

(5) Incomplete Applications. Upon receipt of an incomplete application or an application without the correct fee, the department shall notify the applicant of the need for additional information or payment. The department shall consider the application abandoned if the department does not receive the required information or payment within thirty (30) days after notification of the deficiency. The thirty (30) day period shall begin on the date the notification is issued by the department.

(6) The department shall deny any application for licensure submitted by a person or entity that has refused to comply with an order from the department within five (5) years of the date of application.

(7) The department may~~[shall have the authority to]~~ permit an operator to supplement the list of locations and dates the operator submitted in response to subsection (1)(c)~~[Section 3(1)(c)]~~ of this section~~if regulation; provided, however, that~~ the operator provides~~[shall provide]~~ supplemental locations and dates to the department not later than three (3) business days in advance of the planned use.

Section 4. Written Programs Required for Operations, Maintenance, Inspection, Training, and Risk Management. (1) Prior to applying for licensure, an operator shall implement the following written programs:

(a) An operations program that includes, at a minimum, the components set forth in Section 5.5 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses");

(b) A maintenance program that includes, at a minimum, the components set forth in Section 5.6 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses");

(c) An inspection program that includes, at a minimum, the components set forth in Section 5.7 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses");

(d) A training program that includes, at a minimum, the components set forth in Section 5.8 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses"); and

(e) A risk management program that~~[which]~~ shall include, at a minimum, the following components:

1. Medical emergency plan;

2. Technical rescue plan;

3. Fatality response plan;

4. Plan for contacting 911/Emergency Services when cellular signals are not available;

5. Evacuation plan; and

6. Severe weather preparedness plan.

(2) An operator shall make [available for inspection] the written programs required by subsection (1)~~[Section 4(1)]~~ of this section~~[administrative regulation]~~ available for inspection and review by any employee, representative of the department, or representative of a law enforcement agency who requests to inspect it.

Section 5. Annual Inspection, Certificate of Inspection, and Additional Inspection Ordered by the Department. (1) Annual Inspections. An annual inspection shall be conducted on each aerial recreational device by a qualified inspector.

(a) The inspection shall include, at a minimum, the following components:

1. Verification that the device is in a full operational status;

2. Review of the written Operations Program, Maintenance Program, Inspection Program, Training Program, and Risk Management Programs required by Section 4(1) of this administrative regulation; and

3. Review of records from the operator's daily pre-opening inspections required by Section 6(1) of this administrative regulation.

(b) Following completion of the inspection of each aerial recreational device, the qualified inspector shall determine whether the device is installed correctly according to the engineer-approved design plans if required in Section 3(1)(g) of this administrative regulation. A mobile device does not require a separate inspection at each location of operation.

(2) A qualified inspector shall sign a Certificate of Inspection to certify his or her determination that the requirements [set forth] in subsection (1)~~[Section 5(1)]~~ of this section~~[regulation]~~ are met.

(3) The Certificate of Inspection shall [be recorded on a form approved by the department and] include, at a minimum, the following information:

(a) The qualified inspector's name and contact information;

(b) A declaration of relevant professional credentials or certifications held by the qualified inspector;

(c) The operator's name;

(d) The name of each device's manufacturer, if known;

(e) The name of the engineer who approved the device's design plan;

(f) The product name and serial number for each device;

(g) The date of inspection; and

(h) A statement that the device was installed correctly according to the engineer-approved design plans required by Section 3(1)(g) of this administrative regulation.

(4) If a device does not have an existing serial number, as required by Section 3(1)(b) of this administrative regulation, then the qualified inspector shall assign one for identification purposes.

(5) Additional inspections ordered by the department:

(a) The department may~~[shall have the authority to]~~ order the operator to obtain a new Certificate of Inspection from a qualified inspector for any device ~~;~~ at any time, for any reason, with or without advance notice.

(b) Upon receipt of the~~[such an]~~ order, the operator shall immediately halt patron use of the device until the operator receives permission from the department to resume patron use.

(c) The operator shall pay~~[be responsible for payment of]~~ costs incurred in obtaining an additional inspection.

(d) An additional inspection shall not extend the operator's period of licensure.

Section 6. Requirement for Daily Pre-opening Inspections and Operation in Accordance with Most Recent Manufacturer Recommendations. (1) Daily Pre-opening Inspections. The operator shall perform and record a daily inspection of each aerial recreational device prior to opening the device for use by a patron.

(a) The daily pre-opening inspection shall include, at a minimum, the components set forth in Section 5.7.2 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses").

(b) A daily pre-opening inspection is not required for days when a device will have no patrons using it.

(2) The operator shall operate each device or facility in accordance with the most recent manufacturer recommendations.

Section 7. Additional Employee Training Requirements for Zip Lines. An operator of a zip line shall ensure that each employee operating a zip line receives appropriate training to:

(1) Be proficient in the setup, operation, and ongoing monitoring requirements of the braking system in effect when operating the zip line~~[lines]~~;

(2) Ensure that the departure of a patron from the dispatch

~~zone is~~~~departures of patrons from dispatch zones are~~ performed in a controlled manner and only ~~if~~~~when~~ the zip line is clear of other persons;

(3) Ensure that the deceleration and arrest of ~~a~~ ~~patron~~~~patrons~~ arriving at ~~the~~ landing ~~zone~~~~zones~~ is performed in a controlled manner; and

(4) Ensure that padding used as a protective element in the landing zone is not used in lieu of a brake component.

Section 8. Records. (1) Every operator shall maintain written records relating to the construction, repair, and maintenance of each aerial recreation device. Records shall include ~~at a~~ ~~minimum~~~~but not be limited to~~ inspection, maintenance, and operator training activities.

(2) Records shall be provided to the department within one (1) hour of request.

(3) Records shall be maintained for at least three (3) years.

Section 9. Deaths, Serious Injuries, and Equipment Malfunctions. (1) Any death, serious injury, or equipment malfunction that arises from the use of an aerial recreation device or facility shall be reported to the department promptly and ~~within~~~~in no case more than~~ twelve (12) hours following notice of the death, serious injury, or malfunction.

(2) Following a death, serious injury, or equipment malfunction, the device or facility shall be subject to a stop order issued by the department. ~~Upon receipt of a stop order,~~ The operator shall immediately close and secure the device or facility until a qualified inspector has completed a new Certificate of Inspection of the device or facility. ~~Any~~~~The~~ stop order shall remain in effect until lifted by the department.

(3) Following a death, serious injury, or equipment malfunction, the operator shall submit a written report to the department within forty-eight (48) hours. The written report shall contain the following information:

(a) The date and time of the incident;

(b) The location of the incident;

(c) A description of the incident;

(d) The name, address, and phone number of the operator;

(e) The name and address of each employee involved in the incident or accident;

(f) The name, serial number, and manufacturer of the aerial recreational device;

(g) The name, address, phone number, gender, and age of the injured person;

(h) The nature and extent of the injury;

(i) The name and location of the treating facility, physician, or other qualified medical professional;

(j) The address, telephone number, and printed and signed name of the person completing the report;

(k) The date and time the report was completed; and

(l) The cause of the incident, if known.

(4) ~~A~~~~No~~ person shall ~~not~~ alter the incident scene or any element or structure without written permission from the department, except as necessary to prevent injury, remove injured persons, or permit the movement of emergency vehicles.

(5) Following a death, serious injury, or equipment malfunction, the department ~~may~~~~shall have the authority to~~ conduct an investigation. ~~If investigated,~~ the report of the investigation shall be placed on file in the department and document in detail the facts and information available. The owner may submit results of any other investigations for inclusion in the file.

Section 10. Who can be a Qualified Inspector. (1) A person seeking to register shall complete and submit a qualified inspector Registration Form with an annual registration fee of \$100.

(2) ~~A~~~~No~~ person shall ~~not~~ be a qualified inspector ~~unless he~~ ~~or she can~~~~who cannot~~ demonstrate a current certification or licensure as a Third-Party Inspector or Professional Inspector by one of the following entities:

(a) Association for Challenge Course Technology (ACCT);

(b) Professional Ropes Course Association (PRCA);

(c) National Association of Amusement Ride Safety Officials (NAARSO); or

(d) The Kentucky Board of Engineers & Land Surveyors.

(3) ~~A~~~~No~~ person shall ~~not~~ be a qualified inspector ~~unless he~~ ~~or she has~~~~without having~~ in effect a valid insurance policy written for ~~his or her~~~~their~~ inspection and certification activities that was issued by an insurance company or surplus lines insurer authorized to do business in Kentucky; for:

(a) General liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; and

(b) Professional liability coverage, including errors and omissions, in an amount of not less than \$1,000,000.

(4) The qualified inspector's policies required ~~by subsection~~ ~~(3) of this section~~ ~~[40(3)]~~ shall be distinct from the operator's policy required by in Section 2(2) of this administrative regulation.

(5) The department shall maintain and publish on its website a current list of individuals who ~~are registered as qualified inspectors~~~~have submitted Qualified Inspector Registration Forms~~.

Section 11. Violations and Civil Penalties. (1) The department ~~may~~~~shall have authority to~~ issue a stop order for any device or facility if any ~~provision~~~~provisions~~ of KRS 247.238 or this administrative regulation is violated, or as necessary to protect patrons or members of the public.

(2) Pursuant to KRS 247.238~~(5)~~, the department ~~may~~~~is authorized to~~ assess civil penalties consistent with the following schedule:

(a) Violation of Section 2 of this administrative regulation shall result in a civil penalty of up to \$10,000 per occurrence;

(b) Violation of Section 6 of this administrative regulation shall result in a civil penalty of up to \$5,000 per occurrence;

(c) Violation of Section 8 of this administrative regulation shall result in a civil penalty of up to \$5,000 per occurrence;

(d) Violation of Section 9 of this administrative regulation shall result in a civil penalty of up to \$10,000 per occurrence; and

(e) Failure to comply with an order from the department shall result in a civil penalty of up to \$10,000.

(3) The civil penalties permitted in this administrative regulation shall not be construed to preclude the imposition of criminal liability or to preclude any person's assertion of a civil cause of action.

Section 12. Appeals from Notices of Violations and Civil Penalties. (1) The operator shall have ten (10) days upon the receipt of the notification of violation ~~to~~ request a hearing within the department.

(2) Appeals hearings shall be conducted in accordance with KRS Chapter 13B.

Section 13. Types of Devices Excluded from the Definition of Aerial Recreational ~~Device~~~~Devices~~.~~(1)~~ Pursuant to KRS 247.238(1)(b)(3), the following devices are excluded from the definition of aerial recreational device:

~~1~~~~(a)~~ A device meeting the criteria for a "walk through" as defined in 302 KAR 16:020, Section 1(10);

~~2~~~~(b)-(b)~~ A device that does not require a patron's feet to be more than twelve (12) feet off the ground at any time; and

~~3~~~~(c)~~ A device meeting the criteria ~~set forth~~ in Section 2(3) of this ~~administrative~~ regulation.

Section 14. ~~Compliance~~~~Effective~~ Date. ~~Beginning July 1, 2018, aerial recreational devices and facilities shall be operated and inspected as required by~~~~The effective date of~~ this administrative regulation ~~shall be July 1, 2018~~.

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

(a) "Aerial Recreational Device or Facility License Application Form", ~~[(2017)]~~;

(b) "ASTM F2959-16, ~~["]~~Standard Practice for Aerial Adventure Courses", ~~[(2016)]~~;

(c) "Certificate of Inspection Form", ~~[(2017)]~~; and

(d) "Qualified Inspector Registration Form", ~~[(2017)]~~.

(2) ~~This material~~~~These materials~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky

Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: September 14, 2017

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

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)

401 KAR 39:005. Definitions ~~for~~[related to] 401 KAR Chapter 39.

RELATES TO: KRS 224.1[224.04], 224.10, 224.46, **224.50-545(2)(a), 322.010[(2)], 40 C.F.R. Parts 260, 261, 262, 268, 270[260.10]**

STATUTORY AUTHORITY: KRS 224.10-100, **[KRS] 224.46**
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-530(2) authorizes the cabinet to promulgate administrative regulations to establish standards for the management of hazardous waste[This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste]. This administrative regulation establishes definitions for 401 KAR Chapter 39[defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 C.F.R. Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates]. **[Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation.]** Some terms do not have a federal counterpart, and [These terms] have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 39[this chapter].

Section 1. Definitions. Except as established in this section, definitions for 401 KAR Chapter 39 shall be as established in 40 C.F.R. 260.10[Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 39 shall have the meanings given in this Section]. (1) "Acute hazardous waste" is defined by 40 C.F.R. 260.10 and also includes the hazardous wastes listed in 401 KAR 39:060, Section 3(4), Table I with the assigned hazard code of (H)"100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source].

(2) "Administrator":

(a) Means "cabinet", as defined by KRS 224.1-010**(8) [(9)]**; or

(b) Is defined by 40 C.F.R. 260.10 as referenced in:

1. 40 C.F.R. 261.10;

2. 40 C.F.R. 261.11;

3. 40 C.F.R. 261.30(b);

4. 40 C.F.R. 261, Appendix IX;

5. 40 C.F.R. 262, Subpart H;

6. 40 C.F.R. 268.5;

7. 40 C.F.R. 268.6;

8. 40 C.F.R. 268.13;

9. 40 C.F.R. 268.40(b);

10. 40 C.F.R. 268.42(b);

11. 40 C.F.R. 268.44(a), (d), and (e);

12. 40 C.F.R. 270.2;

13. 40 C.F.R. 270.5;

14. 40 C.F.R. 270.10(e)(2) and (3);

15. 40 C.F.R. 270.10(f)(3); and

16. 40 C.F.R. 270.32(b)(2) and (3)"100-year flood" means a

flood that has a one (1) percent chance of being equaled or exceeded in any given year].

(3)"Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That during the calendar year (commencing on January 1) the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape].

(4) "Agency" means "cabinet" as defined by KRS 224.1-010**(8) [(9)]**.

(5)**[(10)]** "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14)] "Application" is defined by 40 C.F.R. 270.2, and includes[means] the forms[form approved by the cabinet] for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapter 39, including Parts [Chapters 30 to 48. The term includes: Part] A and B of the permit application[(Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application].

(6) "Appropriate regional administrator" means "state director".

(7) "Appropriate regional EPA office" means "cabinet" as defined by KRS 224.1-010(8)/(9)].

(8) "Assistant administrator for solid waste and emergency response" means "cabinet" as defined by KRS 224.1-010(8)/(9)].

(9)](15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-840.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27)] "Burn" means:

(a) Burning for energy recovery or destruction;[;], or

(b) Processing for materials recovery or as an ingredient.

(10)](28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29)] "Cabinet" is defined by KRS 224.1-010(8)/(9)] shall have the meaning specified in KRS 224.01-010].

(11)](30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31)] "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(12) "Closure" is defined by KRS 224.1-010(4)](32) "Certificate" shall have the meaning specified in KRS 224.46-810].

(13)](33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36)] "Closure plan" means the plan for closure prepared in accordance with the requirements of 401 KAR 39:090, Sections 1 through 4[Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070].

(14)](37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the

fittings:

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" is defined by 40 C.F.R. 260.10[means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled], and includes transport vehicles that are containers themselves, including[(for example,] tank trucks, tanker-trailers,[and] rail tank cars[)], and containers placed on or in a transport vehicle.

(15)(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means to introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level established/specified in 401 KAR 30:031,[Sections 5 and 6 of] 401 KAR 47:030, Sections 5 and 6, or 401 KAR 39:090, Section 1[Section 8 of 401 KAR 34:060]; or

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level established/specified in 401 KAR 30:031, 401 KAR 47:030, Sections 5 and 6 or 401 KAR 39:090, Section 1[Section 8 of 401 KAR 34:060]; or

(c) A significant increase above the[established] background levels established in 401 KAR 100:030, for substances that do not have an established maximum contamination level.

(16)(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(17)(49) "Contingency plan" is defined by 40 C.F.R. 260.10, and includes[means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment.] financial planning to identify resources for initiation of required[such] action [is a part of contingency plan development].

(18)(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility:

(a)[that is] Designated by the cabinet pursuant to 401 KAR 39:090, Section 1[under 401 KAR 34:287], for the purpose of implementing corrective action requirements established in 401 KAR 39:090,[under Section 12 of 401 KAR 34:060 and] KRS 224.46-520, KRS 224.46.530, and RCRA 3008(h)[- A CAMU]; and

(b) Is [shall] only [be] used for the management of remediation wastes pursuant to implementing the[such] corrective action requirements at the facility.

(19) "Department of Transportation" or "DOT" means the United States Department of Transportation.

(20) "Director" means:

(a) "Cabinet" as defined by KRS 224.1-010(8)(9); or

(b)1. The director of the Federal Register as referenced in 40 C.F.R. 260.11;

2. The director of the U.S. DOT Office of Pipeline and Hazardous Materials Technology as referenced in 40 C.F.R. 261.21(a)(3)(ii)(A);

3. The director of the EPA Office of Resource Conservation and Recovery as referenced in 40 C.F.R. 262.21;

4. The director of the EPA's Collection Strategies Division as referenced in 40 C.F.R. 262, Appendix; and

5. The director of the U.S. DOT Office of Hazardous Materials Regulations as referenced in 40 C.F.R. 263.30(c)(2) and 40 C.F.R. 279.43(c)(3)(ii).

(21)(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 C.F.R. 144.62(a), (b), and (c).

(59) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(60) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least seventy-five (75) percent of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 C.F.R. Part 271, and EPA permit (or a facility with interim status) in accordance with 40 C.F.R. Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 C.F.R. 261.6(c)(2) or 40 C.F.R. Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the

survival and recovery of threatened or endangered species using that habitat.

(64) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" is defined by KRS 224.1-010(8)/(10) shall have the meaning specified in KRS 224.01-010.

(22)(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(69) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(70) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(72) "Draft permit" shall have the same meaning as "proposed permit".

(73) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(75) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 U.S.C. 1536.

(78) "Engineer" is defined by KRS 322.010(2) shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices].

(23) "Environmental Protection Agency" or "EPA":

(a) Means "cabinet" as defined by KRS 224.1-010(8)/(9); or

(b) Means the Federal Environmental Protection Agency:

1. If used in the phrases:

a. "EPA or authorized state";

b. "EPA ID number";

c. "EPA hazardous waste codes";

d. "EPA form";

e. "EPA Region";

f. "EPA Acknowledgement of Consent";

g. "EPA test methods";

h. "EPA guidance"; and

i. "EPA publication; and

2. As referenced in:

a. 40 C.F.R. 260.1;

b. 40 C.F.R. 260.2

c. 40 C.F.R. 260.10 related to the definitions of:

(i) "Administrator";

(ii) "AES filing compliance date";

(iii) "Electronic import-export reporting compliance date";

(iv) "Electronic manifest";

(v) "Electronic manifest system";

(vi) "EPA hazardous waste number";

(vii) "EPA identification number"; and

(viii) "Replacement unit";

d. 40 C.F.R. 260.11(a) and (f);

e. 40 C.F.R. 261.1(a)(2);

f. 40 C.F.R. 261.1(b)(2)(i);

g. 40 C.F.R. 261.4(b)(11)(ii);

h. 40 C.F.R. 261.32(a) related to the listing of K069 only;

i. 40 C.F.R. 261.39(a)(5);

j. 40 C.F.R. 261.41;

k. 40 C.F.R. 261, Appendix IX;

l. 40 C.F.R. 262.20(a)(3)(ii);

m. 40 C.F.R. 262.21;

n. 40 C.F.R. 262.24(a)(3);

o. 40 C.F.R. 262.24(g);

p. 40 C.F.R. 262.25;

q. 40 C.F.R. 262.81 to 40 C.F.R. 262.84;

r. 40 C.F.R. 262, Appendix;

s. 40 C.F.R. 262, Subpart H;

t. 40 C.F.R. 263.20(a), (c), (e), and (f);

u. 40 C.F.R. 263, Subpart B;

v. 40 C.F.R. 264.12(a);

w. 40 C.F.R. 264.71(a)(2)(v);

x. 40 C.F.R. 264.71(a)(3);

y. 40 C.F.R. 264.71(d);

z. 40 C.F.R. 264.71(f)(4) and (5);

aa. 40 C.F.R. 264.71(h)(3);

bb. 40 C.F.R. 264.71(j);

cc. 40 C.F.R. 264.1082(c)(4)(ii), the second occurrence only stating "an equivalent method of treatment approved by EPA";

dd. 40 C.F.R. 265.12(a);

ee. 40 C.F.R. 265.71(a)(2)(v);

ff. 40 C.F.R. 265.71(a)(3);

gg. 40 C.F.R. 265.71(d);

hh. 40 C.F.R. 265.71(f)(4) and (5);

ii. 40 C.F.R. 265.71(h)(3);

jj. 40 C.F.R. 265.71(i);

kk. 40 C.F.R. 265.1083(c)(4)(ii), the second occurrence only stating "an equivalent method of treatment approved by EPA";

ll. 40 C.F.R. 266.103;

mm. 40 C.F.R. 266, Appendix IX;

nn. 40 C.F.R. 267.71(d);

oo. 40 C.F.R. 267.143(f)(2)(i)(A)(1);

pp. 40 C.F.R. 268.1(e)(3);

qq. 40 C.F.R. 268.2(i);

rr. 40 C.F.R. 268.7(e);

ss. 40 C.F.R. 270.1(a)(1);

tt. 40 C.F.R. 270.1(c)(7);

uu. 40 C.F.R. 270.2;

vv. 40 C.F.R. 270.5;

ww. 40 C.F.R. 270.6;

xx. 40 C.F.R. 270.10(e)(2);

yy. 40 C.F.R. 270.11(a)(3);

zz. 40 C.F.R. 270.12;

aaa. 40 C.F.R. 270.32(a) and (c);

bbb. 40 C.F.R. 270.51;

ccc. 40 C.F.R. 270.72(a)(5);

ddd. 40 C.F.R. 270.72(b)(5);

eee. 40 C.F.R. 124.6(e);

fff. 40 C.F.R. 124.10(c)(1)(ii); and

ggg. 40 C.F.R. 273.32(a)(3).

(24) "EPA Environmental Appeals Board" means "cabinet" as

defined by KRS 224.1-010(8)(9).

(25) "EPA Regional Administrator" means "cabinet" as defined by KRS 224.1-010(8)(9).

(26) "EPA regional office" means "cabinet" as defined by KRS 224.1-010(8)(9).

(27)(79) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) "EPA identification number" means the number assigned by EPA or the cabinet to each generator, transporter, or treatment, storage, or disposal facility.

(82) "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.

(83) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by 401 KAR 34:275.

(84) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85)(1) "Existing boiler or industrial furnace" means[indicates] a boiler or industrial furnace that on or before August 21, 1991 was/is either in operation burning, or processing hazardous waste, including the ancillary facilities to burn or to process the hazardous waste, or for which construction, [(including the ancillary facilities to burn or to process the hazardous waste,)] has commenced.

(28)(86) "Existing component" shall have the same meaning as "existing tank system."

(87) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(91) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste

being managed in a tank that has no fixed roof.

(92) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93)(1) "Facility" is defined by 40 C.F.R. 260.10, and includes sites[means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action pursuant to[under] KRS 224.46-520 and KRS 224.46-530.

(29)(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with 401 KAR 39:060, Section 5.

(30) "Federal Register":

(a) Means the United States Federal Register; or

(b) Means the "Administrative Register of Kentucky" as defined by KRS 13A.050, as referenced in 40 C.F.R. 260.20(c) and (e)[Section 7(3)(a)4c of 401 KAR 38:050].

(31)(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104)(1) "Flood plain" means areas adjoining inland waters that[which] are inundated by the base flood, unless otherwise established[specified] in 401 KAR 30:031 or 401 KAR 47:030, and includes[:] 100-year flood plain[floodplain] and floodway.

(32)(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining flood plain[floodplain] that[which] provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year flood plain[floodplain] by more than one (1) foot.

(33)(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage

removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" is defined by KRS 224.1-010(12)/(13) shall have the meaning specified in KRS 224.01-010.

(34)/(112) "Governing body" is defined by KRS 224.1-010(45)/(46) shall have the same meaning as KRS 224.01-010.

(35)/(113) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(36)/(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" is defined by KRS 224.1-010(41)/(42) shall have the meaning specified in KRS 224.01-010.

(37)/(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 39:060, Section 3[401 KAR 31:030].

(38)/(118) "Hazardous waste" is defined by KRS 224.1-010(30)(b)/(31)(b) and implemented through the criteria established in 40 C.F.R. 261.3[shall have the meaning specified in KRS 224.01-010].

(39)/(119) "Hazardous waste constituent" means a constituent that[which] caused the cabinet or EPA to list the hazardous waste [in 401 KAR 31:040], or a constituent listed in 401 KAR 39:060, Section 3 and 40 C.F.R. Part 261, Subpart D[Section 5(3) of 401 KAR 31:030].

(40)/(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is defined by 40 C.F.R. 260.10, and includes[a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include] an[.] aboveground tank[.] component[.] existing tank system or existing component[.] in-ground tank[.] new tank system or new tank component[.] on-ground tank[.] tank system[.] underground tank[.] or unfit-for-use tank system.

(41)/(122) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(123) "Hazardous waste site or facility" means "hazardous waste management facility" as defined by 40 C.F.R. 270.2[any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste

transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit].

(42)/(124) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(125) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum jet or steam jet ejector.

(127) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) "In existence" shall have the same meaning as "existing."

(129) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(132) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) "In vapor service" shall have the same meaning as "in gas service".

(136) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) "Inactive portion" means that portion of a hazardous waste site or facility that[which] was not operated after November 19, 1980.

(43) "Industrial solid waste" is defined by KRS 224.1-010(30)(a)3/(31)(a)3).

(44)/(138) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is

considered a single or individual generation site if the site or property is contiguous.

(142) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 C.F.R. Part 270, and is treated as having a permit until final administrative disposition of the application is made.

(148) "Intermittent stream" means 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.

(149) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "LDR" means land disposal restrictions; (155) "Lamp" means the bulb or tube portion of a lighting device specifically

designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps].

(156) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(157) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(160) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(161) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(162) "Leak detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(163) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(164) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(165) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(166) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(167) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(168) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(169) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a

hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(469)] "Manifest" is defined by KRS 224.1-010(36)(37)] and includes:

(a)1. The shipping document EPA Form 8700-22 as referenced in 40 C.F.R. 260.10; and

2. If applicable, EPA Form 8700-22A as referenced in 40 C.F.R. 260.10; or

(b) The electronic manifest[shall have the meaning specified in KRS 224.01-010].

(48)](170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 C.F.R. Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174)] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(49) "Municipal solid waste" is defined by KRS 224.1-010(30)(a)4](31)(a)4].

(50)](175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

(181) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 C.F.R. Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the

criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192)] "Operator" is defined by 40 C.F.R. 260.10, and includes any operation of a facility[means any person responsible for overall operation of an] on-site or off-site [waste facility], and[including] any private contractor conducting operational activities at a federal facility.

(51)](193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194)] "Owner" is defined by 40 C.F.R. 260.10, and includes[means] any person who owns an on-site or off-site[waste] facility, or any part of a facility.

(52)](195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "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 run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain

classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(202) "Permittee" means any person holding a valid permit issued by the cabinet or EPA to manage, treat, store, or dispose of hazardous waste.

(53)[(203)] "Person" is defined by KRS 224.1-010(16)[(17)] shall have the meaning specified in KRS 224.01-040.

(54)[(204)] "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-040.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 C.F.R. 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Post closure[Postclosure] monitoring and maintenance" is defined by KRS 224.1-010(17)[(18)] shall have the meaning specified in KRS 224.01-040.

(55) "Professional engineer is defined by KRS 322.010(3).

(56) "Professional land surveyor" is defined by KRS 322.010(9)[(216)] "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070].

(57)[(217)] "Pressure release" means the emission of materials resulting from the system pressure being greater than the set

pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010(18)[(19)] shall have the meaning specified in KRS 224.01-040.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump].

(58) "Regional Administrator":

(a) Means "cabinet", as defined by KRS 224.1-010(8)[(9)]; or

(b) Is defined by 40 C.F.R. 260.10 as referenced in:

1. 40 C.F.R. 261, Appendix IX;

2. Note 1 to 40 C.F.R. 261.196;

3. 40 C.F.R. 262, Appendix, Item 18;

4. Note to 40 C.F.R. 264.196;

5. 40 C.F.R. 264.551 and 40 C.F.R. 264.552 related to CAMUs designated under RCRA Section 3008(h);

6. 40 C.F.R. 264.553 related to temporary units designated under RCRA Section 3008(h);

7. Note to 40 C.F.R. 265.196;

8. 40 C.F.R. 270.2 related to the definitions of:

a. "CAMU" under RCRA 3008(h);

b. "Director";

c. "Major facility"; and

d. "State/EPA agreement";

9. 40 C.F.R. 270.5;

10. 40 C.F.R. 270.10(e)(4);

11. 40 C.F.R. 270.10(f)(2);

12. 40 C.F.R. 270.10(g)(1)(i) and (iii);

13. 40 C.F.R. 270.11(a)(3)(ii);

14. 40 C.F.R. 270.51;

15. 40 C.F.R. 124.2;

16. 40 C.F.R. 124.3(c);

17. 40 C.F.R. 124.4(a)(2);

18. 40 C.F.R. 124.4(c)(2);

19. 40 C.F.R. 124.5(d)(3);

20. 40 C.F.R. 124.6(e);

21. 40 C.F.R. 124.10(b);

22. 40 C.F.R. 124.12(b);

23. 40 C.F.R. 124.16(b)(2);

24. 40 C.F.R. 124.18; and

25. 40 C.F.R. 124.19[(225)] "Qualified groundwater scientist"

means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or

disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(59)[(235)] "Remediation waste" is defined by 40 C.F.R. 260.10, and includes means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-530[224.46-520] for releases beyond the facility boundary.

(60)[(236)] "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for the[such] experimental activity have not been promulgated under 401 KAR Chapter 39[Chapters 34 through 36].

(61) "Resource Conservation and Recovery Act", "Act", "RCRA", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C":

(a) Means KRS Chapter 224:

1. If referring to a permit issued by the cabinet pursuant to KRS Chapter 224-46, including a RCRA permit, Part B permit, RCRA Part B permit, RCRA permit by rule, and RCRA standardized permit, except for a federally issued EPA permit or a permit issued by another authorized state; and

2. If referring to the Federal hazardous waste program as a whole;

(b) Means "Act" or "RCRA" as defined by 40 C.F.R. 260.10 if referring to a specific section or provision of RCRA and as referenced in:

1. 40 C.F.R. 261, Appendix IX;

2. 40 C.F.R. 262, Subpart H;

3. 40 C.F.R. 262, Appendix;

4. 40 C.F.R. 270.1(a) and (b);

5. 40 C.F.R. 270.2 related to the definition of "RCRA";

6. 40 C.F.R. 270.14(d)(3); and

7. 40 C.F.R. 270.51(d) in the reference to "EPA-issued RCRA

permit"; or

(c) Means "Act" or "RCRA" as defined by 40 C.F.R. 260.10 and KRS Chapter 224, as appropriate, as referenced in 40 C.F.R. Part 124.

(62)[(240)] "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" is defined by 40 C.F.R. 270.2, and includes a cabinet order[means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events)] leading to compliance with KRS Chapter 224 and 401 KAR Chapter 39[Chapters 30 to 49].

(63) "Solid waste" means for the purposes of 401 KAR Chapter 39, waste that meets the criteria established in 40 C.F.R. 261.2[(245)]

"Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled].

(64)[(246)] "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" means[shall mean] any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. These[Such] units include any area at a facility at which solid wastes have been routinely and systematically released.

(65)[(256)] "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping,

pouring, emitting, or dumping into or on any land or water of hazardous wastes or materials which, if[when] spilled, become hazardous wastes [into or on any land or water].

(66)[(264)] "Start-up" means the setting in operation of a hazardous waste management unit, hazardous secondary material management unit, or control device for any purpose.

(67) "State Director" means "cabinet", as defined by KRS 224.1-010(8)(9)(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge].

(68)[(264)] "Storage" is defined by KRS 224.1-010(27)(28)[shall have the meaning specified in KRS 224.01-010].

(69)[(265)] "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility].

(70)[(266)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being

provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284)] "Transportation" is defined by KRS 224.1-010(28), except as[(29), except for when] used in the phrase "Department of Transportation" [shall have the meaning specified in KRS 224.01-010].

(71)[(285)] "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287)] "Treatment" is defined by KRS 224.1-010(29)[(30)] shall have the meaning specified in KRS 224.01-010].

(72) "United States Environmental Protection Agency", "U.S. Environmental Protection Agency", or "U.S. EPA" means "Environmental Protection Agency" as defined by this administrative regulation.

(73)[(288)] "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or

dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 C.F.R. Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table 1, Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302)] "Used oil" is defined by KRS 224.50-545(2)(a)]shall have the same meaning as KRS 224.50-545].

(74)](303) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy

this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(305) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(308) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) "Washout" means the carrying away of waste by waters as a result of flooding.

(311)] "Waste" is defined by KRS 224.1-010(30)](31)]shall have the meaning specified in KRS 224.01-010].

(75)](312) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314)] "Waste pile" means a noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not in a containment building[shall have the same meaning as "pile"]. [(315) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 C.F.R. 260.11, which is adopted in Section 3 of 401 KAR 30:010). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(316) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(317) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(320) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) "Wetlands" means land that has a predominance of hydric soils and 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.

(322) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.	
Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
C.F.R.	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency

FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit	Permitted principal organic hazardous constituent
POHC	Principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
U.S.C.	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)**

401 KAR 39:060. General requirements[Short-term fees].

RELATES TO: KRS 61.870, 61.884, 224.1-400[61.884], 224.10, 224.40-310, 224.46, 224.99, 40 C.F.R. Parts 124, 260,

261, 268, 270, 42 U.S.C. 2011 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, 224.50-135[224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) and 224.50-130 require the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the treatment, storage, disposal, and recycling of hazardous waste obtain a permit, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities, and the post-closure monitoring and maintenance of hazardous waste disposal facilities[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the general requirements for hazardous waste management systems[fee schedule for short-term permits and emergency identification numbers].

Section 1. Applicability.[(4)] This administrative regulation shall apply to a person, state, ~~or~~**and** federal agency ~~that~~**who** engages in the generation, treatment, storage, disposal, transportation, ~~or~~**and** management of waste defined or identified as hazardous in KRS Chapter 224 or 401 KAR Chapter 39, including hazardous substances spilled into the environment that meet the criteria of hazardous waste[applies to facilities which require emergency permits, emergency identification numbers and land treatment demonstration permits.

(2) The provisions of this administrative regulation shall apply to short-term permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this administrative regulation. Short-term permit applications which are complete, as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to this administrative regulation as in effect on October 16, 1988].

Section 2. Hazardous Waste Management System.[Fees. The fees are as follows:] (1) Except as established in subsections (2) through (6) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste management systems shall be as established in 40 C.F.R. Part 260, except:

~~(a) 40 C.F.R. 260.34(a)(1) to (3);~~

~~(b);~~ 260.10; **and**

~~(c);~~ **and** The last sentence of 40 C.F.R. 260.34(a).[Emergency permits – \$750;]

(2) The public notice requirements established in 40 C.F.R. 260.20(c) shall be replaced with the requirements established in paragraphs (a) and (b) of this subsection. If the tentative decision is to:

(a) Deny the petition, the cabinet shall notify the petitioner in writing and notify the public as required by subsection ~~(3)(b)~~**(4)(b))** of this section; or

(b) Grant the petition, the cabinet shall propose a regulatory amendment, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A, including the rule making and public comment process contained therein.[Land treatment demonstration – \$5,500; and]

(3) The final decision making procedure established in 40 C.F.R. 260.20(e) shall be replaced with procedures established in paragraphs (a) and (b) of this subsection.

(a) The cabinet shall make a final decision after evaluating all public comments.

(b) The final decision shall be published either in the Kentucky

Administrative Register, a daily or weekly major local newspaper of general circulation, or other methods reasonably calculated to give actual notice of the action to the persons potentially affected by it.

(4) A check made payable to the Kentucky State Treasurer in the amount required by KRS 224.46-014 shall be submitted to the cabinet with the submission of a completed petition for each hazardous waste that is petitioned for delisting.

(5) Upon approval by the cabinet of a petition to exclude a waste from a particular facility in accordance with 401 KAR Chapter 39, the excluded waste shall be subject to the disposal requirements established in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

(6) A variance shall be a written waiver from a ~~requirement~~**provision** of 401 KAR Chapters 39 and 40, upon the finding by the cabinet that the absence of the provision shall provide adequate protection to human health and the environment consistent with KRS Chapter 224.

(a)1. A request for variance from a requirement of 401 KAR Chapters 39 and 40 shall be submitted in a report in sufficient detail to provide to the cabinet the analyses, procedures, controls, and other pertinent data necessary to support the request for variance.

2. The granting of a request by the cabinet shall be in writing and shall specify appropriate conditions, including duration, limitations, and review procedures to provide adequate protection to human health and the environment.

(b) The cabinet ~~shall~~**may** grant a variance or permit modification from the requirements of 401 KAR Chapters 39 and 40 if a waste permit requirement, or the process and equipment used, is determined by the cabinet to be:

1. Insignificant as a potential hazard to human health or the environment because of its small quantity, low concentration, physical, biological, or chemical characteristics, or method of operation used; or

2. Handled, processed, or disposed of pursuant to administrative regulations of another governmental agency, if the administrative regulations of other agencies ~~comply with~~**meet** the requirements of the waste management administrative regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

(c) The cabinet shall not grant any request for a variance that shall:

1. Make the hazardous waste program less stringent than the federal hazardous waste management program;

2. Conflict with Kentucky Revised Statutes;

3. Conflict with a regulatory provision stating that no variance shall be granted; or

4. Vary the financial responsibility requirements in a manner conflicting with 401 KAR 39:090 ~~or~~**and** Section 3 of this administrative regulation.[Emergency identification numbers – \$100.]

Section 3. Identification and Listing of Hazardous Waste. (1) Except as established in subsections (2) through (8) of this section and Section 6 of this administrative regulation, the requirements for identification and listing of hazardous waste shall be as established in 40 C.F.R. Part 261, except:

~~(a) 40 C.F.R. 261.4(b)(17);~~

~~(b);~~ 40 C.F.R. 261.149; **and**

~~(c);~~ **and** 40 C.F.R. 261.150.

(2) Wastes shall be considered radioactive mixed wastes if the wastes contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act, 42 U.S.C. 2011 et. seq. Unless specifically exempted by 401 KAR 39:090, Section 3, radioactive mixed wastes shall be subject to the requirements of 401 KAR Chapters 39 and 40.

(3) Facilities required to comply with the export notification requirements referenced in 40 C.F.R. 261.39(a)(5) and 40 C.F.R. 261.41, shall also notify the cabinet.

(4) In addition to those substances listed in 40 C.F.R. 261, Subpart D, substances identified in Table I shall be listed hazardous wastes in the Commonwealth of Kentucky[Submittal of Fees. The appropriate fee shall be submitted to the cabinet with the application. The check shall be made payable to the Kentucky

State Treasurer].

Table I	
Ky. Hazardous Waste No.	Substance
N001	GB (isopropyl methyl phosphonofluoridate) and related compounds (H)
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) and related compounds (H)
N003	H (bis (2-chloroethyl) sulfide) and related compounds (H)
N101	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with GB munitions
N102	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with VX munitions
N201	Metal Parts Treater Residue associated with GB munitions or related wastes
N202	Metal Parts Treater Residue associated with VX munitions or related wastes
N203	Static Detonation Chamber Residue and Ash associated with H munitions
N301	Agent Hydrolysate associated with GB munitions
N302	Agent Hydrolysate associated with VX munitions
N401	Energetic Hydrolysate associated with GB munitions
N402	Energetic Hydrolysate associated with VX munitions
N501	Aluminum Precipitate associated with treated GB wastes
N502	Aluminum Precipitate associated with treated VX wastes
N601	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated GB wastes
N602	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated VX wastes
N701	Lab Wastes associated with treated GB wastes
N702	Lab Wastes associated with treated VX wastes
N703	Lab Wastes associated with treated H wastes

(5) In addition to the agricultural wastes established in 40 C.F.R. 261.4(b)(2), prunings and crop residues shall be agricultural wastes.

(6) In addition to the copy of the written state agreement required in 40 C.F.R. 261.4(b)(11)(ii) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(7) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 261.143(g), 40 C.F.R. 261.147(a)(1)(i), and 40 C.F.R. 261.147(b)(1)(i), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(8) In addition to the excluded hazardous wastes in 40 C.F.R. Part 261, Appendix IX, the cabinet granted[grants] an exclusion for the multi-source landfill leachate (EPA Hazardous Waste F039) generated after February 2, 2017, at Ashland Route 3 Landfill, Kentucky 3, Catlettsburg, Kentucky. This subsection shall serve as publication of the exclusion in accordance with Section 2(3)(b) of this administrative regulation.

(9) Any special waste identified as a hazardous waste as established in this administrative regulation shall be:

(a) Regulated pursuant to 401 KAR Chapter 39; and

(b) Exempt from the assessment of the Kentucky hazardous waste management fund as established in KRS 224.46-580(7).

Section 4. Land Disposal Restrictions. Except as established in Section 6 of this administrative regulation, the requirements for land disposal restrictions shall be as established in 40 C.F.R. Part 268.

Section 5. Hazardous Waste Permit Programs and Procedures. (1) Except as established in subsections (2) through (18) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste permit programs and procedures shall be as established in 40 C.F.R. Parts 124 and 270, except:

(a) 40 C.F.R. 270.1(c)(2)(ix);

(b) ~~40 C.F.R. 270.14(b)(18); and~~

(c) ~~and~~ 40 C.F.R. 124, Subparts C and D.

(2) In addition to public notice requirements of 40 C.F.R. 124, the statement contained in KRS 224.40-310(5)(e) shall be included in each public notice.

(3) The applicant or facility shall reimburse the cabinet for the costs of newspaper advertisements, duplication, and postage for any required public notice or distribution to a mailing list.

(4) In addition to the requirements of 40 C.F.R. 124.10(a)(1)(iii), public notice shall be given if a hearing has been granted pursuant to 401 KAR Chapters 4 and 5 or[and] 805 KAR Chapter 1.

(5) In addition to the federal appeal procedures referenced in 40 C.F.R. Parts 124 and 270, the cabinet appeal procedures shall be as established in KRS 224.10-420 through 224.10-470 and 400 KAR Chapter 1 for cabinet issued permits.

(6)(a) Any owner or operator required to obtain a permit shall complete and submit to the cabinet:

1. EPA form 8700-23 as referenced in 40 C.F.R. 270.13; and
2. Part A Application Addendum, DWM 7058A.

(b) If any of the information required by paragraph (a) of this subsection changes, the owner or operator shall submit revised forms, established[contained] in paragraph (a) of this subsection, to the cabinet within sixty (60) days of the change, except as established in 401 KAR 39:080, Section 5(4).

(7) In addition to the noncompliance reporting requirements referenced in 40 C.F.R. 270.30(l)(6), the permittee shall immediately notify the cabinet of a release as established in KRS 224.1-400.

(8) In addition to the requirements established in 40 C.F.R. 270.10, any person applying for a construction and operation permit shall submit the information and documentation required in KRS 224.46-520(1) to include documentation of the applicant's decisions with respect to the proposal and justification for actions taken.

(9) In addition to the requirements of 40 C.F.R. Parts 124 and 270, for a hazardous waste disposal site or facility, that meets the criteria established in paragraph (a) of this subsection, a permit shall not be approved or issued by the cabinet, or a permit-by-rule applied, prior to the determinations established[specified] in KRS 224.40-310(6).

(a) This subsection shall apply to an owner or operator of:

1. A hazardous waste disposal site or facility that meets the definition of a waste disposal facility as defined by[is] KRS 224.40-310(1); and

2.a. A new or proposed hazardous waste landfill, incinerator, or other site or facility[landfills, incinerators, or other sites or facilities] for the land disposal of hazardous waste;

b. An existing hazardous waste landfill, incinerator, or other site or facility for the land disposal of hazardous waste that requests[landfills, incinerators, or other sites or facilities for the land disposal of hazardous waste that request] a permit modification that does not meet the criteria of a Class 1 or 2 modification; or

c. A new or[and] existing hazardous waste treatment facility or facilities—and hazardous waste storage facility that requests[facilities that request] a permit modification to include a disposal facility instead of or in addition to any permitted hazardous waste activity already conducted by the owner or operator.

(b) The applicant shall obtain local government approval for incinerators or land disposal facilities, as specified in KRS 224.40-310(7).

(10) An emergency permit shall specify that:

(a) All remaining hazardous waste and residues shall be removed at the end of the term of the emergency permit to a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of 401 KAR 39:090;

(b) The permittee shall comply with the closure performance standards established in 401 KAR 39:090, Section 8; and

(c) The cabinet shall recover its actual and necessary costs associated with the permittee's failure to properly close the unit specified in the emergency permit.

(11) Upon collection of trial burn data, referenced in 40 C.F.R. 270.62(b)(9), the data shall become part of the Part B permit application.

(12)(a) In accordance with 401 KAR 39:090, the applicant shall establish financial assurance prior to issuance of a permit or sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(b) The amount of financial assurance established for closure or post-closure shall be in accordance with the plan prepared pursuant to 401 KAR 39:090.

(c) The owner or operator of the hazardous waste site or facility shall submit a demonstration of financial assurance as established in KRS 224.46-520(3) and 401 KAR 39:090.

(13) An owner or operator of existing hazardous waste sites or facilities that close under interim status without submitting Part B of the permit application shall, at a minimum, comply with the corrective action requirements established in 401 KAR 39:090, Section 1.

(14) In addition to the requirements in 40 C.F.R. 270.30 and KRS 224.40-330, any initial, renewal, or change to ownership permit application shall include the following background information and past compliance record:

(a) Organizational structure:

1. If the applicant is a sole proprietor, a detailed listing of any general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

2. If the applicant is a general or limited partnership, a detailed listing of:

a. Each of the partners and their respective interests, whether ownership or otherwise;

b. Any corporation, joint venture, limited liability corporation, general or limited partnership, or proprietorship in which any of the constituent partners of the applicant holds as much as or more than a twenty-five (25) percent interest whether ownership or otherwise; and

c. Any corporation, joint venture, proprietorship, limited liability corporation, or general or limited partnership that holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise in any of the non-individual constituent partners comprising the applicant;

3. If the applicant is a corporation, a detailed listing of:

a. The officers, directors, and major stockholders holding as much as or more than a twenty-five (25) percent;

b. Any corporation of which the applicant is either a subsidiary or which holds as much as or more than a twenty-five (25) percent interest, either in stock or assets, in the applicant;

c. Any corporations that are either subsidiaries of the applicant or in which the applicant holds as much as or more than a twenty-five (25) percent interest, either in stock or assets; and

d. Any proprietorship, general or limited partnership, or joint venture in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise; or

4. If the applicant is a joint venture, a detailed listing of:

a. All other joint ventures, and the respective interests, whether ownership or otherwise of each; and

b. Any proprietorship, general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

(b) For each individual or other entity listed in paragraph (a) of this subsection, a detailed listing of all violations of federal or state laws, rules, or administrative regulations concerning the areas **established/specified** in subparagraphs 1. through 5. of this paragraph, whether judicial or administrative proceedings are pending or completed, that have resulted or may result in either criminal convictions or civil or administrative fines as much as or more than \$1,000:

1. Solid or hazardous waste management;

2. Air pollution;

3. Water;

4. Occupational Safety and Health Administration with respect to hazardous materials or hazardous substances; **or/and**

5. Transportation with respect to hazardous materials or hazardous substances; and

(c) For each individual or other entity listed in paragraph (a) of this subsection, a current financial statement prepared by a certified public accountant.

(15) The owner or operator of the hazardous waste site or facility shall complete and submit an evaluation of subsurface geologic formations and surface topography for solution or karst terrain.

(a) If the owner or operator demonstrates to the cabinet that the facility is not underlain by soluble limestone, the owner or operator shall be exempt from the requirements of this subsection.

(b) Except as established in paragraph (a) of this subsection, the owner or operator shall demonstrate that:

1. The facility has been designed to withstand any gradual or sudden land subsidence, which is characteristic of areas underlain by soluble limestone; and

2. Contamination into or through any fractures, channels, or solution features shall not occur.

(c) Except as established in paragraph (a) of this subsection, the owner or operator shall:

1.a. Establish the presence and extent of all fractures, channels, and solution features in the bedrock beneath the facility and describe how these features **shall/will** be sealed, filled, isolated, or otherwise neutralized to prevent subsidence; and

b. Describe how solution features **shall/will** be monitored to demonstrate compliance with the criteria established in paragraph (b) of this subsection; or

2.a. Design, operate, and maintain a double-liner system, which shall be installed beneath the facility and that **shall include/includes** a leak detection system that meets the criteria established in paragraph (b) of this subsection; and

b. **Comply with all of the requirements[Meet all the specifications]** of 401 KAR 39:090, Section 1, for the design of the double-lined facility as applicable.

(16) The owner or operator of the hazardous waste site or facility shall submit the actual test data demonstrating the liner is or will be compatible with the waste, if applicable.

(17)(a) The applicability established in 40 C.F.R. 124.31(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.31 shall apply to all RCRA part B applications seeking:

a. **An initial permit for a hazardous waste management unit[Initial permits for hazardous waste management units];**

b. **A renewal of a permit for a unit[Renewal of permits for units]** with a significant change in facility operations;

c. A RCRA standardized permit as referenced in 40 C.F.R. 270, Subpart J; or

d. **A renewal of a standardized permit for a unit[units]** with a significant change in facility operations, as defined **by/in** 40 C.F.R. 124.211(c).

2. The requirements in 40 C.F.R. 124.31 shall not apply to permit modifications pursuant to 40 C.F.R. 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) The applicability established in 40 C.F.R. 124.32(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.32 shall apply to RCRA part B applications seeking:

a. **An initial permit for a hazardous waste management unit[Initial permits for hazardous waste management units];** or

b. **A renewal of a permit for a unit[Renewal of permits for units]** pursuant to 40 C.F.R. 270.51.

2. The requirements in 40 C.F.R. 124.32 shall not apply to a **hazardous waste unit for which a facility owner or operator is/hazardous waste units for which facility owners or operators are** seeking:

a. A RCRA standardized permit referenced in 40 C.F.R. part

270, subpart J:

b. A permit modification[Permit modifications] pursuant to 40 C.F.R. 270.42; or

c. A permit application[Permit applications] submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) The applicability established in 40 C.F.R. 124.33(a) shall be replaced with this paragraph. The requirements in 40 C.F.R. 124.33 shall apply to applications seeking RCRA permits for hazardous waste management units.

(18) The biennial reporting referenced in 40 C.F.R. 270.60(a)(3)(v) shall be replaced with annual reporting.

Section 6. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance,for pollutant, or contaminant to the environment in a quantity that may present an imminent or substantial danger to human health or the environment, the facility authorized representative shall:

(a) Immediately notify the cabinet's twenty-four (24) hour emergency response line as required by KRS 224.1-400; and

(b)and Provide a written report of the incident or accident within seven (7) days of the release, if required by the cabinet pursuant to KRS 224.1-400.

(2) Dates included in the federal regulations referenced in 401 KAR Chapter 39 that occurred before the effective date of this administrative regulation shall not be construed as creating a retroactive right or obligation in accordance with 401 KAR Chapter 39 if that right or obligation did not exist in this administrative regulation prior to the date the federal regulations were referenced.

(3) If a right or obligation existed in accordance with federal regulations based on a date in federal regulations, and there is a period from the date cited in the text until the date the requirements initially became effective in 401 KAR Chapter 39, these administrative regulations shall not contravene or countermand the legal application of the federal regulation for that period.

(4)(a) For initial issuance, modification, revocation and reissuance, or termination, of a permit, the applicable administrative regulations shall be those regulatory provisions that are in effect upon the date that the cabinet makes a final determination upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued.

(b) The procedures that shall be used for permit modification, revocation and reissuance, or termination shall be those regulatory procedures that are in effect upon the date of the cabinet's final determination.

(5) In addition to[Section 7003 of] RCRA, Section 7003 KRS 224.10-410 shall apply.

(6) In addition to[Section 3008 of] RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(7) In addition to[Section 3004 of] RCRA, Section 3004 KRS 224.46-520, 401 KAR 39:090, and Section 4 of this administrative regulation shall apply.

(8)(a) As referenced in 401 KAR Chapter 39, the requirements in[Section 3010 of] RCRA, Section 3010 shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance, to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in 401 KAR 39:080, Section 1(2) and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulation.

(9) Any person who submits information to the cabinet pursuant to KAR Chapters 39 and 40, may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures established in KRS 224.10-212 and 400 KAR 1:060.

(a) Information covered by a claim shall be disclosed by the cabinet as established in 400 KAR 1:060 and KRS Chapter 61, except that information required by 401 KAR 39:080, Section 1, which is submitted in notification of intent to export a hazardous

waste, shall be provided to the U.S. Department of State, U.S. EPA, and the appropriate authorities in a receiving country regardless of any claims of confidentiality.

(b) If a claim does not accompany the information received by the cabinet, the claim[it] may be made available to the public without further notice to the person submitting the claim[it].

(10) A person shall not deliver hazardous waste to a facility for treatment, storage, or disposal, unless the owner or operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980;

(b) Qualified for interim status in accordance with 401 KAR 39:090, Section 2; or

(c) Been granted a hazardous waste site or facility permit by the cabinet.

(11) A person shall not engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet in accordance with KRS 224.46-520(1).

(12) Issuance of a federal permit to own or operate a hazardous waste site or facility shall not relieve the owner or operator of the responsibility to comply with the requirements of 401 KAR Chapter 39.

(13) All permit forms or permit submissions to the cabinet shall include:

(a) One (1) original and two (2) paper copies of the form;

(b) One (1) electronic copy, which shall be an exact match to the original;

(c) Up to seven (7) additional copies of the application, if requested by the cabinet for public review;

(d) The Agency Interest (AI) number, if known; and

(e) A signature of the authorized representative.

(14) In addition to 40 C.F.R. 270.43, the cabinet may terminate a permit during its term or deny a permit renewal application for a violation of any requirement of KRS Chapter 224 or 401 KAR Chapter 39.

(15) In addition to 40 C.F.R. 270.50, a permit for the nerve agents established[specified] in KRS 224.50-130 and Section 3 of this administrative regulation shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified if necessary, as established in Section 5 of this administrative regulation.

(16) The permittee shall have paid the applicable fees due as established in KRS 224.46 and 401 KAR 39:120.

(17) Except for closure, post-closure, and corrective action permit applications, failure to submit a requested application on time, or to submit in full the information required by 401 KAR Chapter 39, shall result in denial of the application in accordance with this administrative regulation.

(18) Past performance of the owner or operator shall be considered in the review and in the determination of any requirement for specialized conditions pursuant to KRS 224.40-330.

(19) The provisions of 401 KAR Chapter 39 shall be compatible with and complementary to each other. If an administrative regulation is found to be contradictory, the more stringent provision shall apply.

(20) The citations to Sections 301, 307, and 402 of the Clean Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(21) The citations to the Clean Air Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 50 through 65.

(22) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9 and 10, and 805 KAR Chapter 1.

(23) In addition to 40 C.F.R. 258 and Subtitle D, 401 KAR Chapters 45, 47, and 48 shall apply.

(24) In addition to[Subtitle C of] RCRA, Subtitle C KRS 224.46 shall apply.

(25) In addition to[3008h of] RCRA, Section 3008h KRS 224.10-100(18), KRS 224.99-010(5), and KRS 224.46-530 shall apply.

Section 7. Incorporation by Reference. (1) "Part A Application

Addendum", DWM 7058A, June 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)

401 KAR 39:080. Hazardous waste handlers[Recycling and universal waste fees].

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. Parts 260 through 267, 270, 273, 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545[, 224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 requires that used automotive and industrial oil shall be recycled or disposed of properly[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the standards for hazardous waste handlers[fee schedule for permits for recyclers of hazardous waste and petitions to include additional wastes under 401 KAR Chapter 43].

Section 1. Generators of Hazardous Waste.[Applicability:] (1) Except as established in subsections (2) through (11) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to generators of hazardous waste shall be as established in 40 C.F.R. Part 262, except 40 C.F.R. 262.10(k)[applies to all persons considered to be recyclers in accordance with the criteria contained in Section 1 of 401 KAR 35:010 and 401 KAR Chapter 36].

(2) Small quantity generators and large quantity generators shall register with the cabinet by completing and submitting:

(a) EPA form 8700-12 as referenced in 40 C.F.R. Parts 260 through 267, 270, 273, and 279; and

(b) Registration of Hazardous Waste Activity Addendum, DWM 7037A.

(3) The registration established in subsection (2) of this section shall be submitted annually to the cabinet at least forty-five (45) days prior to the expiration date shown on the certificate of registration.

(4)(a) A generator that[who] has not received an EPA identification number may obtain one by registering with the cabinet as established in subsection (2) of this section.

(b) Upon receiving the request and reviewing the information, the cabinet shall assign an EPA identification number to the generator.

(5)(a) Hazardous waste generation and on-site management of hazardous waste shall be consistent with the registration submitted pursuant to subsection (2) of this section.

(b) If any information submitted in accordance with subsection (2) of this section changes, the generator shall modify and resubmit the form that includes the changes to the cabinet no later than thirty (30) days following the change.

(6) A hazardous waste generator that no longer generates hazardous waste on site, closes its facility, or goes out of business, shall complete and submit to the cabinet the Request to be Removed from the Hazardous Waste Handler List, DWM 7086, within ninety (90) days after the last date of hazardous waste generation.

(7)(a) A hazardous waste generator may only treat on-site in tanks, containers, containment buildings, and on drip pads, if:

1. A generator complies with the hazardous waste accumulation provisions of this section;

2. The generator notifies the cabinet of the intent to treat hazardous waste as required by subsection (2) of this section; and

3. The cabinet issues written approval to the generator.

(b)1. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, or the environment in a manner consistent with the purpose of **401 KAR Chapter 39[the waste management administrative regulations]** and KRS Chapter 224.

2. If the cabinet determines that the approved treatment is not protective of human health, safety, or the environment, the cabinet shall issue a written revocation of the approval and all treatment activities shall cease.

(8)(a) Generators, except for very small quantity generators, shall prepare a Hazardous Waste Annual Report for the cabinet annually by completing and submitting:

1. EPA form 8700-13 A/B as referenced in 40 C.F.R. 262.41(a), 264.75, 265.75, and 267.75; and

2. Hazardous Waste Annual Report Addendum, DWM 7072A.

(b) Each generator, except for very small quantity generators, shall submit a copy of the Hazardous Waste Annual Report established in paragraph (a) of this subsection as established in KRS 224.46-510(1)(h).

(9) A generator, except for very small quantity generators, shall not offer hazardous waste to a transporter or to a treatment, storage, or disposal facility that has not received an EPA identification number.

(10)(a) A large quantity generator or small quantity generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste until the generator has:

1. Registered with the cabinet as established in subsection (2) of this section; and

2. Received an EPA identification number.

(b) A very small quantity generator shall not treat hazardous waste until the generator has registered with the cabinet as established in subsection (2) of this section.

(11) The requirement for the container marking wording to state "Federal Law Prohibits" referenced in 40 C.F.R. 262.32(b), shall be replaced with "Federal and State Law Prohibit".

(12) In addition to the requirements in 40 C.F.R. 262.18, a very small quantity generator voluntarily requesting to obtain an EPA identification number, shall register with the cabinet in accordance with subsection (2) of this section[This administrative regulation applies to all persons who petition the cabinet to include additional wastes as a universal waste under 401 KAR Chapter 43].

Section 2. Transporters of Hazardous Waste.[Schedule of Fees for Recycling.] (1) Except as established in subsections (2) and (3) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to transporters of hazardous waste shall be as established in 40 C.F.R. Part 263[An annual fee shall be required in order to register as a recycler of hazardous wastes. The fee to register as a hazardous waste recycler is \$300. Generators who generate less

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

than 100 kg of hazardous waste in a calendar month (that is, conditionally exempt small quantity generators) shall be exempt from the registration fee for recycling activities].

(2)(a) A transporter shall not transport hazardous wastes or used oil within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet, any other RCRA authorized state, or from the Federal Environmental Protection Agency.

(b) To obtain an EPA identification number from the cabinet, a transporter shall:

1. For a transporter who is also a hazardous waste generator or used oil transporter, register with the cabinet as established in Section 1(2) and (3) of this administrative regulation; or

2. For a transporter that is not also a hazardous waste generator or used oil transporter, complete and submit the Registration of Hazardous Waste Transportation Activity, DWM 7053.

(3) In addition to 40 C.F.R. 263.30(c), an air, rail, highway, or water transporter that has any knowledge of a release or threatened release of a hazardous substance or pollutant or contaminant shall notify and report to the cabinet as established in Section 5(1) of this administrative regulation [No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply].

Section 3. Universal Waste. (1) Except as established in subsections (2) through (4) of this section and Section 5 of this administrative regulation, the requirements for standards for universal waste management shall be as established in 40 Part C.F.R. 273.

(2)(a) Prior to conducting on-site treatment of their own accumulated universal waste, a large or small quantity handler shall be subject to the requirements of Section 1 of this administrative regulation, including the requirement for on-site treatment by generators.

(b) Prior to conducting on-site treatment of accumulated universal waste received from off-site, a large or small quantity handler shall be subject to the requirements of 401 KAR 39:060 and 401 KAR 39:090.

(3) Breaking, disassembling, crushing, or otherwise damaging, intentionally or unintentionally, universal waste lamps shall render them a hazardous waste.

(4) A large quantity handler of universal waste shall register and report as established in Section 1 of this administrative regulation [Fees for Universal Waste Petitions. Any person seeking to add a hazardous waste or a category of hazardous waste to 401 KAR Chapter 43 shall submit a \$2,500 fee with the petition required in 401 KAR 43:070].

Section 4. Used Oil. (1) Except as established in subsections (2) through (9) of this section and Section 5 of this administrative regulation, the requirements for standards for the management of used oil shall be as established in 40 C.F.R. Part 279, except 40 C.F.R. 279.82.

(2) In addition to 40 C.F.R. 279.22 and 40 C.F.R. 279.52, KRS 224.1-400(11) and (12) and KRS 224.1-405 shall apply.

(3) An owner or operator of each used oil collection center shall:

(a) Register initially with the cabinet as established in Section 1(2) of this administrative regulation; and

(b) Complete and submit a Hazardous Waste Annual Report annually as established in Section 1(8) of this administrative regulation.

(4) A used oil processor, recycler, re-refiner, burner, or marketer that has not received an EPA identification number shall register with the cabinet as established in Section 1(2) of this administrative regulation.

(5) In addition to 40 C.F.R. 279.54, upon detection of a release of used oil to the environment, [I] not subject to the requirements established in 401 KAR 42:060, an owner or operator shall notify and report to the cabinet pursuant to Section 5(1) of this administrative regulation.

(6) In addition to 40 C.F.R. 279.43, 601 KAR 1:025 and Section 5(1) of this administrative regulation shall apply.

(7) Used oil shall not be used as a dust suppressant within the Commonwealth of Kentucky.

(8) In addition to 40 C.F.R. Part 280, 401 KAR Chapter 42 shall apply.

(9) The citations to Sections 307(b) and 402 of the Clean Water Act referenced in 40 C.F.R. Part 279 shall also include 401 KAR Chapter 5 [Submittal of Fees. The required fees shall be submitted to the cabinet with the permit application. All checks shall be made payable to the Kentucky State Treasurer].

Section 5. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum to the environment in a quantity that may present an imminent or substantial danger to human health or the environment as established in KRS 224.1-400, the facility authorized representative shall immediately notify the cabinet's twenty-four (24) hour emergency response line and provide a written report of the incident or accident within seven (7) days of the release, pursuant to KRS 224.1-400.

(2) In addition to [Section 3008 of] RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(3) In addition to [Subtitle C of] RCRA, Subtitle C KRS 224.46 shall apply.

(4)(a) As referenced in 401 KAR Chapter 39, the requirements in [Section 3010 of] RCRA Section 3010 shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in Section 1(2) of this administrative regulation and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulations.

(5) In addition to 40 C.F.R. Part 257 and 40 C.F.R. Part 258, 401 KAR Chapters 45, 47, and 48 shall apply.

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

(a) "Hazardous Waste Annual Report Addendum", DWM 7072A, June 2017;

(b) "Registration of Hazardous Waste Activity Addendum", DWM 7037A, June 2017;

(c) "Registration of Hazardous Waste Transportation Activity", DWM 7053, June 2017; and

(d) "Request to be Removed from the Hazardous Waste Handler List", DWM 7086, June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. until 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: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)

401 KAR 39:090. Hazardous waste permit program [Postclosure fees].

RELATES TO: KRS 224.10, 224.46, 224.50-130, 224.99,

304.11-030, 40 C.F.R. 264, 265, 266, 267

STATUTORY AUTHORITY: KRS 224.46-520, **224.5-130**[224.10-100, 224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, to establish corrective action requirements, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions]. KRS 224.50-130 requires the Energy and Environment Cabinet to list additional compounds as hazardous wastes and to consider additional criteria in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents[KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the standards for the hazardous waste permit program[fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities].

Section 1. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Except as established in subsections (1) through (7) of this section and Sections 5 through 9 of this administrative regulation, standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 264, except 40 C.F.R. 264.1(f), 40 C.F.R. 264.1(g)(12), 40 C.F.R. 264.15(b)(5), 40 C.F.R. 264.149, 40 C.F.R. 264.150, 40 C.F.R. 264.301(l), 40 C.F.R. 264.1030(d), 40 C.F.R. 264.1050(g), and 40 C.F.R. 264.1080(e) ~~through~~(f) (g)[Applicability].

(1) The Maximum Concentration of Constituents for Groundwater Protection in 40 C.F.R. 264.94, Table 1 shall be replaced with Table 1 of this subsection.

Table 1: Maximum Concentration of Constituents for Groundwater Protection	
Maximum Contaminant Constituent	Level (mg/l)
Antimony	0.006
Arsenic	0.01
Barium	2.0
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004
Cadmium	0.005
Carbon tetrachloride	0.005
Chlordane	0.002
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Dibromochloropropane	0.0002
1,2-Dichloroethane	0.005
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane (Methylene chloride)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
1,2-Dichloropropane	0.005
Di(2-ethylhexyl)phthalate	0.006
Dinoseb	0.007
Endothall	0.1
Endrin	0.002
Ethylene dibromide (1,2-Dibromoethane)	0.00005
Fluoride	4.0

Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lead	0.15
Lindane	0.0002
Mercury	0.002
Methoxychlor	0.04
Monochlorobenzene	0.1
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001
Selenium	0.05
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Toxaphene	0.003
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
1,2,4-Trichlorobenzene	0.07
1,1,2-Trichloroethane	0.005
2,4,5-TP Silvex	0.01
2,3,7,8-TCDD (Dioxin)	3.0 x 10 ⁻⁸
Vinyl chloride	0.002

[This administrative regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of 401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an operation permit for a landfill required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:120.]

(2) In addition to 40 C.F.R. 264.143(e)(1), 40 C.F.R. 264.145(e)(1), 40 C.F.R. 264.147(a)(1)(ii), and 40 C.F.R. 264.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer that is authorized to transact insurance in Kentucky, except **if KRS 304.11-030 establishes**[as **KRS 304.11-030 provides**] otherwise.

(3) The reference in 40 C.F.R. 264.570 and 265.440(a) to "December 6, 1990", shall be replaced with "August 18, 1994", for drip pads where F034 or F035 wastes are handled.

(4) The reference in 40 C.F.R. 264.570 to "December 24, 1992", shall be replaced with "August 26, 1996", for drip pads where F034 or F035 wastes are handled.

(5) A tank system that stores or treats materials that become hazardous waste subsequent to March 10, 1988, shall conduct an assessment of any existing tank system's integrity within twelve (12) months after the date the waste becomes a hazardous waste.

(6) In addition to the requirements in 40 C.F.R. 264.304, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1).

(7) In addition to the requirements in 40 C.F.R. 264.226, 264.254, and 264.303, applicants shall demonstrate that the admixed liner **shall be**[is] structurally sound and chemically resistant to the waste placed in it to ensure that the liner **shall be**[is] capable of supporting the waste without cracking, disintegrating, or allowing waste or leachate to escape[The provisions of this administrative regulation shall apply to post closure permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this administrative regulation. Postclosure permit applications which are complete, as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to this administrative regulation as in effect on October 26, 1988].

Section 2. Owners and Operators of Interim Status Hazardous Waste Treatment, Storage, and Disposal Facilities. (1) Except as established in subsections (2) through (4) of this section and Sections 5 through 9 of this administrative regulation, interim status standards for owners and operators of hazardous waste treatment,

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

storage, and disposal facilities shall be as established in 40 C.F.R. Part 265, except 40 C.F.R. 265.1(c)(4), 40 C.F.R. 265.1(c)(15), 40 C.F.R. 265.149, 40 C.F.R. 265.150, 40 C.F.R. 265.1030(c), 40 C.F.R. 265.1050(f), and 40 C.F.R. 265.1080(e) **through (g)** [Filing Fees].

(2) In addition to the requirements in 40 C.F.R. 265.303, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1) [Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable filing fee in the amount of \$4,000].

(3) In addition to 40 C.F.R. 265.143(d)(1), 40 C.F.R. 265.145(d)(1), 40 C.F.R. 265.147(a)(1)(ii), and 40 C.F.R. 265.147(b)(1)(iii), each insurance policy providing primary coverage shall be issued by an insurer who is authorized to transact insurance in Kentucky, except **if KRS 304.11-030 establishes** [as **KRS 304.11-030 provides**] otherwise.

(4) As of January 12, 1991, a facility that failed to qualify for federal interim status for any waste code promulgated pursuant to HSWA or that lost interim status for failing to certify as required by HSWA for any newly promulgated waste code, shall also be denied interim status pursuant to this administrative regulation.

Section 3. Specific Hazardous Wastes and Facilities. Except as established in subsections (1) through (3) of this section and Sections 5 through 9 of this administrative regulation, standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities shall be as established in 40 C.F.R. Part 266 [Review Fee].

(1) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain in 40 C.F.R. Part 266, Appendix I, Table I-D shall be replaced with Table I-D in this subsection.

Table I-D: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain

Terrain adjusted eff. stack ht. (m)	Values for use in urban areas				Values for use in rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	4.6E-02	1.1E-01	1.7E-02	8.2E-02	2.4E-02	5.8E-02	8.6E-03	4.3E-02
6	5.4E-02	1.3E-01	1.9E-02	9.4E-02	2.8E-02	6.6E-02	1.0E-02	5.0E-02
8	6.0E-02	1.4E-01	2.2E-02	1.1E-01	3.2E-02	7.6E-02	1.1E-02	5.6E-02
10	6.8E-02	1.6E-01	2.4E-02	1.2E-01	3.6E-02	8.6E-02	1.3E-02	6.4E-02
12	7.6E-02	1.8E-01	2.7E-02	1.4E-01	4.3E-02	1.1E-01	1.6E-02	7.8E-02
14	8.6E-02	2.1E-01	3.1E-02	1.5E-01	5.4E-02	1.3E-01	2.0E-02	9.6E-02
16	9.6E-02	2.3E-01	3.5E-02	1.7E-01	6.8E-02	1.6E-01	2.4E-02	1.2E-01
18	1.1E-01	2.6E-01	4.0E-02	2.0E-01	8.2E-02	2.0E-01	3.0E-02	1.5E-01
20	1.2E-01	3.0E-01	4.4E-02	2.2E-01	1.0E-01	2.5E-01	3.7E-02	1.9E-01
22	1.4E-01	3.4E-01	5.0E-02	2.5E-01	1.3E-01	3.2E-01	4.8E-02	2.4E-01
24	1.6E-01	3.9E-01	5.8E-02	2.8E-01	1.7E-01	4.0E-01	6.0E-02	3.0E-01
26	1.8E-01	4.3E-01	6.4E-02	3.2E-01	2.1E-01	5.0E-01	7.6E-02	3.9E-01
28	2.0E-01	4.8E-01	7.2E-02	3.6E-01	2.7E-01	6.4E-01	9.8E-02	5.0E-01
30	2.3E-01	5.4E-01	8.2E-02	4.0E-01	3.5E-01	8.2E-01	1.2E-01	6.2E-01
35	3.0E-01	6.8E-01	1.0E-01	5.4E-01	5.4E-01	1.3E+00	1.9E-01	9.6E-01
40	3.6E-01	9.0E-01	1.3E-01	6.8E-01	8.2E-01	2.0E+00	3.0E-01	1.5E+00
45	4.6E-01	1.1E+00	1.7E-01	8.6E-01	1.1E+00	2.8E+00	4.2E-01	2.1E+00
50	6.0E-01	1.4E+00	2.2E-01	1.1E+00	1.5E+00	3.7E+00	5.4E-01	2.8E+00
55	7.6E-01	1.8E+00	2.7E-01	1.4E+00	2.0E+00	5.0E+00	7.2E-01	3.6E+00
60	9.4E-01	2.2E+00	3.4E-01	1.7E+00	2.7E+00	6.4E+00	9.6E-01	4.8E+00
65	1.1E+00	2.8E+00	4.2E-01	2.1E+00	3.6E+00	8.6E+00	1.3E+00	6.4E+00
70	1.3E+00	3.1E+00	4.6E-01	2.4E+00	4.3E+00	1.0E+01	1.5E+00	7.6E+00
75	1.5E+00	3.6E+00	5.4E-01	2.7E+00	5.0E+00	1.2E+01	1.8E+00	9.0E+00
80	1.7E+00	4.0E+00	6.0E-01	3.0E+00	6.0E+00	1.4E+01	2.2E+00	1.1E+01
85	1.9E+00	4.6E+00	6.8E-01	3.4E+00	7.2E+00	1.7E+01	2.6E+00	1.3E+01
90	2.2E+00	5.0E+00	7.8E-01	3.9E+00	8.6E+00	2.0E+01	3.0E+00	1.5E+01
95	2.5E+00	5.8E+00	9.0E-01	4.4E+00	1.0E+01	2.4E+01	3.6E+00	1.8E+01
100	2.8E+00	6.8E+00	1.0E+00	5.0E+00	1.2E+01	2.9E+01	4.3E+00	2.2E+01
105	3.2E+00	7.6E+00	1.1E+00	5.6E+00	1.4E+01	3.4E+01	5.0E+00	2.6E+01
110	3.6E+00	8.6E+00	1.3E+00	6.4E+00	1.7E+01	4.0E+01	6.0E+00	3.0E+01
115	4.0E+00	9.6E+00	1.5E+00	7.2E+00	2.0E+01	4.8E+01	7.2E+00	3.6E+01
120	4.6E+00	1.1E+01	1.7E+00	8.2E+00	2.4E+01	5.8E+01	8.6E+00	4.3E+01

(2) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain. Values for use in Urban and Rural Areas in 40 C.F.R. Part 266, Appendix I, Table I-E shall be replaced with Table I-E in this subsection.

Table I-E: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain. Values for use in Urban and Rural Areas

Terrain adjusted eff. stack ht. (m)	Values for use in urban and rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	1.1E-02	2.6E-02	4.0E-03	2.0E-02
6	1.6E-02	3.9E-02	5.8E-03	2.9E-02
8	2.4E-02	5.8E-02	8.6E-03	4.3E-02
10	3.5E-02	8.2E-02	1.3E-02	6.2E-02

12	4.3E-02	1.0E-01	1.5E-02	7.6E-02
14	5.0E-02	1.3E-01	1.9E-02	9.4E-02
16	6.0E-02	1.4E-01	2.2E-02	1.1E-01
18	6.8E-02	1.6E-01	2.4E-02	1.2E-01
20	7.6E-02	1.8E-01	2.7E-02	1.3E-01
22	8.2E-02	1.9E-01	3.0E-02	1.5E-01
24	9.0E-02	2.1E-01	3.3E-02	1.6E-01
26	1.0E-01	2.4E-01	3.6E-02	1.8E-01
28	1.1E-01	2.7E-01	4.0E-02	2.0E-01
30	1.2E-01	3.0E-01	4.4E-02	2.2E-01
35	1.5E-01	3.7E-01	5.4E-02	2.7E-01
40	1.9E-01	4.6E-01	6.8E-02	3.4E-01
45	2.4E-01	5.4E-01	8.4E-02	4.2E-01
50	2.9E-01	6.8E-01	1.0E-01	5.0E-01
55	3.5E-01	8.4E-01	1.3E-01	6.4E-01

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

60	4.3E-01	1.0E+00	1.5E-01	7.8E-01
65	5.4E-01	1.3E+00	1.9E-01	9.6E-01
70	6.0E-01	1.4E+00	2.2E-01	1.1E+00
75	6.8E-01	1.6E+00	2.4E-01	1.2E+00
80	7.6E-01	1.8E+00	2.7E-01	1.3E+00
85	8.2E-01	2.0E+00	3.0E-01	1.5E+00
90	9.4E-01	2.3E+00	3.4E-01	1.7E+00
95	1.0E+00	2.5E+00	4.0E-01	1.9E+00
100	1.2E+00	2.8E+00	4.3E-01	2.1E+00
105	1.3E+00	3.2E+00	4.8E-01	2.4E+00
110	1.5E+00	3.5E+00	5.4E-01	2.7E+00
115	1.7E+00	4.0E+00	6.0E-01	3.0E+00
120	1.9E+00	4.4E+00	6.4E-01	3.3E+00

(3) The Risk Specific Doses (10⁻⁵) in 40 C.F.R. Part 266, Appendix V shall be replaced with Appendix V in this subsection.

Appendix V: Risk specific doses (10⁻⁶)

Constituent	CAS No.	Unit risk (m3/ug)	RsD (ug/m3)
Acrylamide	79-06-1	1.3E-03	7.7E-04
Acrylonitrile	107-13-1	6.8E-05	1.5E-02
Aldrin	309-00-2	4.9E-03	2.0E-04
Aniline	62-53-3	7.4E-06	1.4E-01
Arsenic	7440-38-2	4.3E-03	2.3E-04
Benz(a)anthracene	56-55-3	8.9E-04	1.1E-03
Benzene	71-43-2	8.3E-06	1.2E-01
Benzidine	92-87-5	6.7E-02	1.5E-05
Benzo(a)pyrene	50-32-8	3.3E-03	3.0E-04
Beryllium	7440-41-7	2.4E-03	4.2E-04
Bis(2-chloroethyl)ether	111-44-4	3.3E-04	3.0E-03
Bis(chloromethyl)ether	542-88-1	6.2E-02	1.6E-05
Bis(2-ethylhexyl)-phthalate	117-81-7	2.4E-07	4.2E+00
1,3-Butadiene	106-99-0	2.8E-04	3.6E-03
Cadmium	7440-43-9	1.8E-03	5.6E-04
Carbon Tetrachloride	56-23-5	1.5E-05	6.7E-02
Chlordane	57-74-9	3.7E-04	2.7E-03
Chloroform	67-66-3	2.3E-05	4.3E-02
Chloromethane	74-87-3	3.6E-06	2.8E-01
Chromium VI	7440-47-3	1.2E-02	8.3E-05
DDT	50-29-3	9.7E-05	1.0E-02
Dibenz(a,h)anthracene	53-70-3	1.4E-02	7.1E-05
1,2-Dibromo-3-chloropropane	96-12-8	6.3E-03	1.6E-04
1,2-Dibromoethane	106-93-4	2.2E-04	4.5E-03
1,1-Dichloroethane	75-34-3	2.6E-05	3.8E-02
1,2-Dichloroethane	107-06-2	2.6E-05	3.8E-02
1,1-Dichloroethylene	75-35-4	5.0E-05	2.0E-02
1,3-Dichloropropene	542-75-6	3.5E-01	2.9E-06
Dieldrin	60-57-1	4.6E-03	2.2E-04
Diethylstilbestrol	56-53-1	1.4E-01	7.1E-06
Dimethylnitrosamine	62-75-9	1.4E-02	7.1E-05
2,4-Dinitrotoluene	121-14-2	8.8E-05	1.1E-02
1,2-Diphenylhydrazine	122-66-7	2.2E-04	4.5E-03
1,4-Dioxane	123-91-1	1.4E-06	7.1E-01
Epichlorohydrin	106-89-8	1.2E-06	8.3E-01
Ethylene Oxide	75-21-8	1.0E-04	1.0E-02
Ethylene Dibromide	106-93-4	2.2E-04	4.5E-03
Formaldehyde	50-00-0	1.3E-05	7.7E-02
Heptachlor	76-44-8	1.3E-03	7.7E-04
Heptachlor Epoxide	1024-57-3	2.6E-03	3.8E-04
Hexachlorobenzene	118-74-1	4.9E-04	2.0E-03
Hexachlorobutadiene	87-68-3	2.0E-05	5.0E-02
Alpha-hexachlorocyclo-hexane	319-84-6	1.8E-03	5.6E-04
Beta-hexachlorocyclo-hexane	319-85-7	5.3E-04	1.9E-03
Gamma-hexachlorocyclohexane	58-89-9	3.8E-04	2.6E-03

Hexachlorocyclohex-ane, Technical	-	5.1E-04	2.0E-03
Hexachlorodibenzo-p-dioxin(1,2 Mixture)	-	1.3E+0	7.7E-07
Hexachloroethane	67-72-1	4.0E-06	2.5E+01
Hydrazine	302-01-2	2.9E-03	3.4E-04
Hydrazine Sulfate	302-01-2	2.9E-03	3.4E-04
3-Methylcholanthrene	56-49-5	2.7E-03	3.7E-04
Methyl Hydrazine	60-34-4	3.1E-04	3.2E-03
Methylene Chloride	75-09-2	4.1E-06	2.4E-01
4,4'-Methylene-bis-2-chloroaniline	101-14-4	4.7E-05	2.1E-02
Nickel	7440-02-0	2.4E-04	4.2E-03
Nickel Refinery Dust	7440-02-0	2.4E-04	4.2E-03
Nickel Subsulfide	12035-72-2	4.8E-04	2.1E-03
2-Nitropropane	79-46-9	2.7E-02	3.7E-05
N-Nitroso-n-butylamine	924-16-3	1.6E-03	6.3E-04
N-Nitroso-n-methylurea	684-93-5	8.6E-02	1.2E-05
N-Nitrosodiethylamine	55-18-5	4.3E-02	2.3E-05
N-Nitrosopyrrolidine	930-55-2	6.1E-04	1.6E-03
Pentachloronitroben-zene	82-68-8	7.3E-05	1.4E-02
PCBs	1336-36-3	1.2E-03	8.3E-04
Pronamide	23950-58-5	4.6E-06	2.2E-01
Reserpine	50-55-5	3.0E-03	3.3E-04
2,3,7,8-Tetrachlorodi-benzo-p-dioxin	1746-01-6	4.5E+01	2.2E-08
1,1,2,2-Tetrachloro-ethane	79-34-5	5.8E-05	1.7E-02
Tetrachloroethylene	127-18-4	4.8E-07	2.1E+00
Thiourea	62-56-6	5.5E-04	1.8E-03
1,1,2-Trichloroethane	79-00-5	1.6E-05	6.3E-02
Trichloroethylene	79-01-6	1.3E-06	7.7E-01
2,4,6-Trichlorophenol	88-06-2	5.7E-06	1.8E-01
Toxaphene	8001-35-2	3.2E-04	3.1E-03
Vinyl Chloride	75-01-4	7.1E-06	1.4E-01

[Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The review fee shall be \$9,000.]

Section 4. Standardized Permits. Except as established in Sections 5 through 9 of this administrative regulation, the standards for owners and operators of hazardous waste facilities operating under a standardized permit shall be as established in 40 C.F.R. 267, except 40 C.F.R. 267.150[Submittal of Fees. (4) The fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall be made payable to the Kentucky State Treasurer].

Section 5. Flood Plains. (1)[(a)] Except as established in **subsection (3)(b) of this section[paragraph (c)2. of this subsection]**, a facility located in a 100-year flood plain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year flood plain throughout the:

(a)[1.] Active life of the facility;

(b)[2.] Closure phase of the facility; and

(c)[3.] For disposal facilities only, the post-closure phase.

(2)[(b)] Prevention of washout and protection from inundation shall be accomplished by:

(a)[1.] Using a structure or device designed to:

1.[a.] Provide adequate freeboard to prevent overtopping of the structure during a 100-year flood due to wind and wave action;

2.[b.] Provide sufficient structural integrity to prevent massive

failure due to the force and erosive tendencies of the 100-year floodwaters; and

3.[c.] Accommodate other characteristics of the facility's location as necessary to accomplish the requirements of this subsection;

(b)[2.] Providing procedures that shall cause the waste to be removed safely, before floodwaters can reach the facility, to a location where the wastes ~~shall~~will not be vulnerable to floodwaters; or

(c)[3.] Demonstrating that alternate devices or measures, with the exception of covering the waste, shall provide protection that meets the requirements of this subsection.

(3)[paragraph. (c)] The cabinet shall not issue a permit to construct a new hazardous waste:

(a)[1.] Site or facility in the floodway; or

(b)[2.] Disposal site or facility in the 100-year flood plain or a seasonal high-water table.

(4)[(d)] A hazardous waste site or facility shall not restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the 100-year flood plain so as to pose a hazard to human life, wildlife, or land or water resources.

(5)[(e)] A facility that has closed and removed all hazardous waste, waste constituents, contaminated soil, debris, or other material contaminated with hazardous constituents, shall not be required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood.

Section 6. Chemical Demilitarization. (1) In addition to the requirements in 40 C.F.R. Part 264, the cabinet shall consider the criteria established in subsection (2) of this section in making a determination to issue, deny, or condition a permit for any person applying for a permit to construct or operate a hazardous waste site or facility for treatment, storage, or disposal of any of the hazardous wastes listed in 401 KAR 39:060, Section 3(4).

(2) The permit applicant shall affirmatively demonstrate and the cabinet shall determine prior to issuance, conditional issuance, or denial of the permit that:

(a)1. The proposed treatment or destruction technology has been proven in an operational facility of scale, configuration, and throughput comparable to the proposed facility, for a period of time sufficient to provide assurance of 99.9999 percent destruction and removal efficiency of each substance proposed to be treated or destroyed as established in KRS 224.50-130(3)(a).

2. Destruction and removal efficiency (DRE) shall be determined for each waste from the following equation:

$$\text{DRE \%} = (\text{Win} - \text{Wout}) / \text{Win} \times 100\%$$

Where:

Win = Mass feed rate of waste into the process.

Wout = Mass emission rate of the same waste out of the process;[.]

(b)1. Monitoring data from a comparable facility shall reflect the absence of emissions from stack or fugitive sources, including the products of combustion and incomplete combustion, which alone or in combination present an adverse effect on human health or the environment in accordance with KRS 224.50-130(3)(b).

2. The cabinet shall determine from the monitoring data the absence of risk to human health and the environment prior to permit issuance;[.]

(c) A plan has been developed and funded providing for sufficient training, coordination, and equipment for state and local emergency response consistent with the requirements ~~established~~set forth in KRS 224.50-130(c); ~~and~~;

(d) All workers within 1000 meters of the treatment unit ~~shall be~~are provided with an adequate level of protection against exposure to the nerve agents.

(3) In addition to the performance standards established in Section 1 of this administrative regulation, a facility treating the nerve and blister agents with hazardous waste codes N001, N002, or N003 established in 401 KAR 39:060, Section 3(4) shall be designed, constructed, and maintained to achieve a 99.9999 percent destruction and removal efficiency of each substance treated or destroyed.

(4)(a) An owner or operator ~~that~~who stores munitions or explosive hazardous wastes that contain the substances

~~established~~specified in 401 KAR 39:060, Section 3(4), shall be subject to the requirements of 40 C.F.R. 264, Subpart EE.

(b) As referenced in 40 C.F.R. 266.202(a), military munitions shall not include any material containing the substances established in 401 KAR 39:060, Section 3(4).

(c) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste in 401 KAR 39:060, Section 3(4), shall be subject to the applicable regulatory requirements of 401 KAR Chapter 39, including the storage prohibitions referenced in 40 C.F.R. 268.50 as established in 401 KAR 39:060, Section 4.

Section 7. Financial Assurance. (1)(a) An owner or operator may satisfy the financial assurance requirements of this administrative regulation by submitting to the cabinet by certified mail, a bond guaranteeing compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(b) The bond shall be supported by a cash account or certificate of deposit.

(c) The cash account or the certificate of deposit shall be held in escrow pursuant to an escrow agreement.

(d) An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(e) A cash account or certificate of deposit shall only be held by a bank or financial institution that is subject to and complies with all applicable state and federal financial regulations.

(2) In addition to the financial assurance wording of instruments referenced in 40 C.F.R. 264.143, 40 C.F.R. 264.145, 40 C.F.R. 264.147, 40 C.F.R. 264.151, 40 C.F.R. 265.143, 40 C.F.R. 265.145, 40 C.F.R. 265.147, 40 C.F.R. 267.143, 40 C.F.R. 267.147, and 40 C.F.R. 267.151, the owner or operator shall include the following information if using cash or certificate of deposit:

(a) Date that the signatory signed the document in front of the notary public;

(b) Signature, seal, and the date that the notary public's commission expires;

(c) Dollar amount being posted in escrow in words and in United States dollars;

(d) Certificate number, date of issuance, and principal dollar amount in United States dollars, of each certificate of deposit;

(e) Cash account number, date of opening, and principal dollar amount in United States dollars of each cash account maintained;

(f) Signature of the authorized representative of the escrow agent; and

(g) Signature of the Director of the Kentucky Division of Waste Management.

(3) The cabinet shall be the beneficiary of the Escrow Agreement to demonstrate closure, post-closure, or corrective action for the cash account or certificate of deposit.

(4) The cabinet shall be empowered to draw upon the funds if the owner or operator fails to perform closure, post-closure, or corrective action in accordance with the respective plan.

(5) The sum of the cash account or certificate of deposit shall be in an amount at least equal to the amount of the current closure, post-closure, or corrective action cost estimate, except as established in this subsection.

(6) After each interest period is completed, if the current closure, post-closure, or corrective action cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the cash accounts or the certificate of deposit.

(a) If the value of the cash accounts or certificate of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, shall:

1. Deposit an amount into the cash accounts or the certificate of deposit so that ~~the~~fits value after this deposit at least equals the amount of the current closure, post-closure, or corrective action cost estimate; or

2. Obtain other financial assurance as established in 40 C.F.R. Parts 264 or 265 to cover the difference.

(b) If the value of the cash account or the certificate of deposit is greater than the total amount of the current closure, post-closure, or corrective action cost estimate, the owner or operator may submit a written request to the cabinet for release of the amount in excess of the current closure, post-closure, or corrective action cost estimate.

(7)(a) The terms of the escrow agreement for a cash account or certificate of deposit shall provide a provision for a notice of cancellation by certified mail to the owner or operator and to the cabinet prior to cancellation.

(b) The cancellation provision shall state that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by return receipt.

(8) The owner or operator may cancel the cash account or certificate of deposit if the cabinet has given prior written consent. The cabinet shall provide a written consent if:

(a) An owner or operator substitutes alternate financial assurance as established in this administrative regulation; or

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with this administrative regulation.

(9)(a) An owner or operator or any other person authorized to perform closure, post-closure, or corrective action may request reimbursement for closure, post-closure, or corrective action expenditures by submitting itemized bills to the cabinet.

(b) Within sixty (60) days after receiving bills for closure, post-closure, or corrective action activities, the cabinet shall determine if the closure, post-closure, or corrective action expenditures are in accordance with the plan or approved, and if so, the cabinet may instruct the bank or financial institution to make reimbursements in those amounts as stated in writing if the cabinet determines that the expenditures are in accordance with the plan or approved.

(10) If a financial mechanism is used for multiple facilities, all matters arising in accordance with the financial mechanism related to the validity, interpretation, performance, and enforcement of the financial mechanism shall be determined in accordance with the law and practice of the Commonwealth of Kentucky.

(11) Except as established[provided] in 401 KAR Chapter 39 and KRS 224.46, a variance or other waiver of any financial requirements shall not be granted by the cabinet.

(12) Upon request by the cabinet, the insurer shall provide to the cabinet a duplicate original of the policy including all endorsements thereon.

(13)(a) Based on evidence that the owner or operator may no longer meet the financial test for any financial assurance posted, the cabinet shall[may] require reports of financial condition from the owner or operator.

(b) If the cabinet determines, based on the reports of financial condition or other information, that the owner or operator no longer meets the financial test for any financial assurance posted, the owner or operator shall provide financial assurance using the appropriate instrument as established[specified] in this administrative regulation within thirty (30) days after notification of the cabinet's determination.

(14) In addition to 40 C.F.R. 264.151 requiring an owner or operator to notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the cabinet and all Regional Administrators of Regions that are affected by the owner or operator's financial assurance mechanisms.

Section 8. Releases from Solid Waste Management Units. The owner or operator of a facility, any person seeking a permit, or any person closing a facility for the treatment, storage, or disposal of hazardous waste, shall institute corrective action as established in this section, necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(1) A facility assessment shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Sections 6(1) and (2).

(2) A fee for the facility assessment shall be required as established in KRS 224.46-016(3).

(3)(a) Corrective action shall be established in the permit or other enforceable document in accordance with this administrative regulation.

(b) The permit or other enforceable document shall contain:

1. A schedule of compliance for the corrective action, if corrective action will not be completed prior to issuance of the permit or closure of the facility; and

2. An assurance of financial responsibility for completing the corrective action.

(4)(a) A required facility investigation shall be conducted consistent with the requirements established in 401 KAR 100:030, Section 6(3) through (8), Section 7(2)(a)1 and 2, and Section 7(2)(b) and (c).

(b) A fee for the facility investigation shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(a).

(5)(a) A required plan or report for corrective action shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Section 8(1) and (3) and Section 9(1) and (2).

(b) A fee for corrective action shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(b).

(6) The owner or operator shall implement corrective actions beyond the facility property boundary, if necessary to protect human health and the environment, unless the owner or operator demonstrates to the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain permission to implement corrective actions beyond the facility property boundary.

(a) The owner or operator shall not be relieved of all responsibility to clean up a release that has migrated beyond the facility property boundary if off-site access is denied.

(b) On-site measures to address releases beyond the facility property boundary shall be determined in accordance with 401 KAR Chapter 39.

(c) An assurance of financial responsibility for corrective action for releases beyond the facility property boundary shall be provided.

(7) This section shall not apply to a remediation waste management site unless the site[is] is part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

(8) The schedule for closure of each hazardous waste management unit and for final closure of the facility required to be included in the closure plan established in subsection (5) of this section, shall also comply with the requirements in KRS 224.46-520(8).

Section 9. Exceptions and Additions. (1)(a) In the event of a release or threatened release of a pollutant or contaminant to the environment the facility shall comply with the requirements of 401 KAR 39:060, Section 6(1).

(b) If the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired in accordance with KRS 224.1-400.

(c) The reference to "EPA notification procedures" referenced in 40 C.F.R. Parts 264 to 267 shall be replaced with the notification procedures established in paragraph (a) of this subsection.

(2) Any reports, notifications, information, or documents required to be submitted to EPA, shall also be submitted to the cabinet at the same time.

(3) In addition to ~~Section 3008 of~~ RCRA, **Section 3008**, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(4) In addition to ~~Section 3004(o)(1) of~~ RCRA, **Section 3004(o)(1)** KRS 224.46-530(1)(h) and (i), Sections 1 and 2 of this administrative regulation shall apply.

(5) The citation to ~~Section 3004(k) of~~ RCRA, **Section 3004(k)** shall be replaced with KRS 224.1-010(43).

(6) In addition to the requirements in ~~Section 3005 of~~ RCRA, **Section 3005**, KRS 224.46-520, KRS 224.46-530, 401 KAR 39:060, and this administrative regulation shall apply.

(7) In addition to ~~Section 7003 of~~ RCRA, **Section 7003**, KRS 224.10-410 shall apply.

(8) In addition to ~~Section 3005(i)(1) of~~ RCRA, **Section**

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

3005(j)(1), Sections 1 and 2 of this administrative regulation shall apply.

(9) In addition to RCRA, Sections 3004(o)(2) and (3), Section 1 of this administrative regulation shall apply.

(10) In addition to RCRA, Sections 3005(j)(2), (3), (4), and (13), Section 2 of this administrative regulation shall apply.

(11) The requirements in [Section 3010(a) of] RCRA, Section 3010(a) shall be replaced with the requirements established in 401 KAR 39:080, Section 1(2).

(12) In addition to [Section 3019 of] RCRA, Section 3019, KAR 39:060, and KRS 224.46-520(1) shall apply.

(13) In addition to [Section 3004(d) of] RCRA, Section 3004(d), KRS 224.46-520(2) shall apply.

(14) Any decision to shorten the post-closure period or the post-closure monitoring and maintenance of a permitted facility shall be made in accordance with KRS 224.46-520(4).

(15) Waste, used oil, or material contaminated with dioxins or hazardous wastes shall not be used as a dust suppressant.

(16) In addition to the import notifications referenced in 40 C.F.R. 264.12(a) and 40 C.F.R. 265.12(a) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(17) In addition to the requirements in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, owners and operators of hazardous waste treatment, storage, and disposal facilities and owners and operators of interim status hazardous waste treatment, storage, and disposal facilities shall prepare a Hazardous Waste Annual Report for the cabinet annually as established in 401 KAR 39:080, Section 1(8)(a).

(18) The citations to [Sections 301, 307, and 402 of] the Clean Water Act, Sections 301, 307, and 402 in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(19) The citations to 40 C.F.R. Part 60 and 40 C.F.R. Part 61, shall also include 401 KAR 60:005 and 401 KAR 57:002, respectively.

(20) The citation to 40 C.F.R. 63, Subpart EEE shall also include 401 KAR 63:002, Section 2(4)(rr).

(21) The citation to 40 C.F.R. 124.15 in 40 C.F.R. 264.1030(c), 40 C.F.R. 264.1050(c), 40 C.F.R. 264.1080(c), 40 C.F.R. 265.1080(c) shall be replaced with 40 C.F.R. 124.5.

(22) The citations to 40 C.F.R. Part 144 in 40 C.F.R. Parts 264, 265, and 267 shall be replaced with 805 KAR 1:110.

(23) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 264.143(h), 40 C.F.R. 264.145(h), 40 C.F.R. 264.147(a)(1)(i), 40 C.F.R. 264.147(b)(1)(i), 40 C.F.R. 265.143(g), 40 C.F.R. 265.147(a)(1)(i), 40 C.F.R. 265.147(b)(1)(i), and 40 C.F.R. 265.145(g), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(24) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9, and 10, and 805 KAR Chapter 1.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)**

401 KAR 39:120. Permit review, determination timetables, and [Application] fees.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99, 40 C.F.R. Part 270

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220,

224.46-550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) authorizes[states][that] the Energy and Environment[Environmental and Public Protection] Cabinet to promulgate an[may provide by] administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. [The purpose of] This administrative regulation[chapter is to establish a] establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management. [This administrative regulation establishes the fee schedule for storage, treatment or disposal facility permits.]

Section 1. Applicability. (1) This administrative regulation shall apply[applies] to:

(a) An owner or operator of a hazardous waste site or facility in Kentucky that submits an application for:

1. A[All] treatment, storage, or disposal facility permit;

2. A post-closure permit;

3. A permit that contains exposure information reports for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill;

4. An emergency permit;

5. A land treatment demonstration permit; or

6. An emergency identification number;

(b) A person who:

1. Is a recycler of hazardous waste; or

2. Petitions the cabinet to include additional wastes as a universal waste;

(c) A marketer or burner of hazardous waste fuel or used oil burned for energy recovery;

(d) A large quantity handler of universal waste;

(e) A used oil processor, refiner, burner, or marketer;

(f) A hazardous waste transporter;

(g) A hazardous waste generator; and

(h) A generator who treats hazardous waste on-site[facilities required by 401 KAR Chapter 38 to submit an application for a hazardous waste site or facility permit].

(2) [The provisions of] This administrative regulation shall apply to all applications for hazardous waste site or facility permits submitted, including those applications that[on or after the effective date of this administrative regulation, and to such applications which] are not complete[as determined by the cabinet, by the effective date of this administrative regulation].

Section 2. Filing Fees. (1) Any owner or operator who submits a Part A Permit Application, incorporated by reference in 401 KAR 39:060, for a treatment, storage, or disposal facility shall submit [with the application] a filing fee in the amount of \$1,000.

(2)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility shall submit a filing fee in the amount of \$4,000.

(b) The filing fee established in paragraph (a) of this subsection shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5.

Section 3. Review Fees. (1)[Permitting Fees.] In addition to those fees established by[identified in] KRS 224.46-016, any owner or operator who submits a permit application for a treatment, storage, or disposal facility shall submit[with the application] the following unit fees:

(a) Containment buildings - \$7,400;

(b) Drip pads - \$3,700;

(c) Miscellaneous units:

1. Treatment unit - \$15,800;

2. Storage unit - \$3,700; and

3. Disposal unit - \$12,200; and

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(d) Boilers and industrial furnaces - \$19,400.

(2) ~~[Closure Fees.]~~ Any owner or operator ~~that~~who submits a closure plan for a treatment, storage, or disposal facility shall submit ~~[with the application]~~[the following fees:]:

(a) A closure plan fee of \$3,600;

(b) A ~~[RCRA]~~ facility assessment fee in accordance with KRS 224.46-016; and

(c) A review fee for each type of hazardous waste management unit being closed.

1. The fee for incinerators shall be submitted one (1) time for each different type of incinerator.

2. The fees for tanks and containers shall be submitted one (1) time for each different tank design or container type.

3. Tank design criteria ~~shall include~~includes differences in materials of construction, pressure vessels, nonpressure vessels, shape, and ancillary equipment.

4. Container types ~~shall~~ include drums, tote bins, bottles, and roll-off boxes.

5. The fees shall be:

~~a.~~1. Incinerator - \$2,000;

~~b.~~2. Waste piles - \$1,000;

~~c.~~3. Surface impoundments - \$1,500;

~~d.~~4. Tanks - \$660;

~~e.~~5. Containers - \$460;

~~f.~~6. Land treatment - \$2,000;

~~g.~~7. Landfill - \$2,000;

~~h.~~8. Containment buildings - \$660;

~~i.~~9. Drip pads - \$660;

~~j.~~10. Miscellaneous units:

~~(i).~~(a.) Treatment unit - \$2,000;

~~(ii).~~(b.) Storage unit - \$660; and

~~(iii).~~(c.) Disposal unit - \$1,000; and

~~k.~~11. Boilers and industrial furnaces - \$2,000.

(3) ~~[Corrective action fees.]~~ Any owner or operator ~~that~~who is required to submit to the cabinet ~~a~~[RCRA] facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee upon the request of the cabinet. These fees shall be the cost of review, but shall not exceed the following amounts:

(a) ~~[RCRA]~~ Facility investigation plan - the fee as established in KRS 224.46-016;

(b) Corrective action plan - the fee as established in KRS 224.46-016;

(c) Corrective action management unit - \$3,700; and

(d) Temporary unit:

1. Temporary containers - \$3,000; and

2. Temporary tanks - \$3,700.

(4) ~~[Modification fees.]~~ In addition to those fees ~~established by~~specified in KRS 224.46-018, any owner ~~or~~[of] operator ~~that~~who modifies a permit shall submit ~~[with the modification]~~ the ~~[following]~~ fees ~~established in this subsection.~~[-:]

(a) An owner or operator ~~that~~who modifies an existing hazardous waste treatment, storage, or disposal facility permit to add one (1) or more waste streams, or a waste stream with the same characteristic that is already permitted, shall submit the following fees along with the modification:

1. Containment buildings - \$3,400;

2. Drip pads - \$3,400;

3. Miscellaneous units:

a. Treatment unit - \$5,500;

b. Storage unit - \$3,400; and

c. Disposal unit - \$4,500; and

4. Boilers and industrial furnaces - \$6,500.

(b) An owner or operator ~~that~~who modifies an existing hazardous waste treatment, storage, or disposal facility permit by constructing or operating an additional hazardous waste treatment, storage, or disposal unit, or by substantially modifying an existing hazardous waste treatment, storage, or disposal unit, shall submit the following fees along with the modification:

1. Containment buildings - \$7,400;

2. Drip pads - \$3,700;

3. Miscellaneous units:

a. Treatment unit - \$15,800;

b. Storage unit - \$3,700; and

c. Disposal unit - \$12,200; and

4. Boilers and industrial furnaces - \$19,400. ~~[(c)1. An owner or operator that modifies a registration in accordance with 401 KAR 39:080, Section 1(5)(b) shall submit a registration modification fee in the amount of fifty (50) dollars.~~

~~2. The registration modification fee established in subparagraph 1. of this paragraph shall not apply to a registrant who modifies his registration by only making a name change.]~~

(5)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility, but has not received a permit, shall submit a review fee in the amount of \$9,000.

(b) This fee shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5 and pay the fees required by this administrative regulation.

(6) Any owner or operator that submits an application for an emergency permit shall submit a review fee in the amount of \$750.

(7) Any owner or operator that submits an application for land treatment disposal shall submit a review fee in the amount of \$5,500.

(8) In addition to any other required registration fees, any owner or operator that submits an application for an emergency identification number shall also submit a review fee in the amount of \$100.

(9) A person petitioning to change the classification of a hazardous waste or a category of hazardous waste to a universal waste shall submit a review fee in the amount of \$2,500.

(10) A person who submits a permit application containing an exposure information report for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill shall submit a review fee in the amount of \$5,000.

Section 4. Registration and Fees. (1) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an annual registration fee in the amount of \$300 shall be submitted:

(a) Per process for a hazardous waste generator ~~that~~who treats hazardous waste on site;

(b) Per process for a recycler of hazardous waste;

(c) By a marketer or burner of hazardous waste fuel burned for energy;

(d) By a used oil processor, refiner, burner, or marketer; and

(e) By a Kentucky based hazardous waste transporter; and

~~(f) By a very small quantity generator]~~

(2) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an initial registration fee in the amount of \$300 shall be submitted for:

(a) Nonhazardous used oil activities;

(b) A large quantity handler of universal waste; and

(c) A non-Kentucky based hazardous waste transporter.

~~(3)(a) An owner or operator that modifies a registration in accordance with 401 KAR 39:080, Section 1(5)(b) shall submit a registration modification fee in the amount of fifty (50) dollars.~~

~~(b) The registration modification fee established in paragraph (a) of this subsection shall not apply to a registrant that who modifies a registration by only making a name change.~~

~~(4)(a) An annual registration fee in the amount of \$200 shall be submitted by a very small quantity generator who submits a registration in accordance with 401 KAR 39:080, Section 1, except as established in subsection (b) of this section.~~

~~(b) For a person who submits more than one (1) very small quantity generator registrations under common ownership, that are received on the same date by the hazardous waste branch, an initial fee of \$200 shall be charged to the first registration, and a \$150 fee shall be charged to each additional registration.~~

Section 5. Submittal of Fees. (1) The fees required in Sections

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

2 through 4 of this administrative regulation shall be submitted to the cabinet with the application, registration, petition, or other required documentation related to the request.

(2) Fees shall not be refunded if an application, registration, petition, or other request is withdrawn.

(3)(2) All checks or money orders shall be made payable to the Kentucky State Treasurer and note that the fee is for hazardous waste branch.

(4) The cabinet shall refund any fees paid in accordance with Section 1(1)(g) of this administrative regulation, if the cabinet fails to provide a written determination within sixty (60) days of receipt of a generator's request to treat hazardous waste on-site.

Section 6. Permit Review and Determination Timetables. (1) The official date of receipt for documents associated with a hazardous waste permit shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant for a hazardous waste permit shall have the burden of establishing that the application is in compliance with all applicable requirements of KRS Chapter 224 and 401 KAR Chapter 39.

(3)(a) If a Part A Permit Application, incorporated by reference in 401 KAR 39:060, is required by KRS Chapter 224 and 401 KAR Chapter 39, the applicant shall submit that application at least forty-five (45) days prior to submitting any of the applications set forth in paragraph (b) of this subsection.

(b) The cabinet shall review all hazardous waste permit applications and make a determination to issue or deny a permit within the following timetables:

1. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for storage in containers or tanks only within 180 calendar days;

2. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for treatment and storage in containers or tanks within 365 calendar days;

3. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste incinerators within 365 calendar days;

4. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for facilities with land-based units, including surface impoundments, waste piles, land treatment units, and landfills, and other miscellaneous units within 365 calendar days;

5. Class 3 modifications to a hazardous waste permit within 365 calendar days;

6. Class 1 and Class 2 modifications to a hazardous waste permit requiring approval within ninety (90) calendar days;

7. Closure plan with groundwater monitoring within 365 calendar days;

8. Closure plan without groundwater monitoring within 180 calendar days; and

9. Renewal of permits shall follow the same timetables as established in subparagraphs 1. through 4. of this paragraph for the applicable type of unit.

(c) The timetables established in paragraphs (a) and (b) of this subsection may be extended to a mutually agreed upon timetable, at the initiative of either the cabinet or the applicant.

1. The purpose and period of the extension shall be in writing and, if agreed to, shall be signed by both the cabinet and the applicant.

2. The agreement to extend the timetable shall become part of the cabinet's administrative record.

(d) If a hazardous waste permit application requires more than one (1) type of permit action as established in paragraph (b) of this subsection, the review time for each permit action shall apply and run consecutively upon/when computing the total review time for the issuance or denial of the permit.

(4) The time periods established in subsection (3) of this section shall not run during the following intervals:

(a) From the date the cabinet mails or hand delivers a notice of deficiency to an applicant until the date the Division of Waste Management stamps as received a complete response to the deficiencies;

(b) Sixty (60) days from the date of any public hearing or meeting on the application to allow the cabinet time to consider public comments;

(c) From the date the cabinet submits an application to U.S. EPA for overview until the date the cabinet receives U.S. EPA's comments;

(d) From the date a permit application is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings; and

(e) If a governing body holds a public hearing pursuant to KRS 224.40-310(7), sixty (60) days from the date of publication of the public notice on the hearing.

(5) 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 the applicant.

(a) If the permits are coordinated, the cabinet shall notify the applicant and indicate the time frames for which the intermediate actions and final permit actions shall be accomplished.

(b) The established time frame for final action shall not exceed the last date for action required by KRS Chapter 224 and 401 KAR Chapter 39, based on all applications being considered and their filing dates.

(6)(a)1. If a notice of deficiency is sent to an applicant, the applicant shall have forty-five (45) calendar days to respond to the notice of deficiency.

2. The forty-five (45) day time period may be extended by agreement between the cabinet and the applicant.

(b) Failure to respond to a notice of deficiency within the established/specified time shall be grounds for denial of the permit.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)**

401 KAR 45:060. Special waste permit-by-rule.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain, or permit the use of a waste site or facility to obtain a permit. This administrative regulation establishes~~sets forth~~ the requirements for a special waste permit-by-rule.

Section 1. Permit-by-rule. Notwithstanding any other provision of this chapter, the following special waste sites or facilities shall be deemed to have a permit without the owner or operator having made application or registration with the cabinet, if the operation is a practice common to the industry, if the site or facility is not in violation of 401 KAR 30:031, and if the operation does not present a threat or potential threat to human health or the environment:

(1) Pits~~[Oil production brine pits and gas and oil drilling mud pits, during the active life of the pit, if the pit is]~~ subject to 401 KAR 5:090;

(2) Temporary storage of special waste in piles;

(3) Injection wells;

(a) ~~Used~~~~[used]~~ for disposal of special waste subject to 805 KAR 1:110;~~[401 KAR 5:090]~~ or

(b) ~~In~~~~[in]~~ compliance with an underground injection control

permit issued by the U.S. EPA;

(4) Special waste surface impoundments with a KPDES permit;

(5) If the facility is in compliance with the KPDES or NPDES permit, surface impoundments that.

(a) ~~That~~ Treat domestic sewage and that do not contain any industrial wastewater; or

(b) ~~Are~~ Are publicly owned treatment works for the treatment of domestic sewage, if the facility is in compliance with the KPDES or NPDES permit; and

(6) Beneficial reuse of coal combustion by-products for placement at active or abandoned underground or surface coal mines, including structural fill, backfill, material for contouring, mine stabilization, and reclamation material, if:

(a) The utilization of coal combustion by-products does not result in the creation of a nuisance condition;

(b) Erosion and sediment control measures consistent with sound engineering practices shall be undertaken;

(c) Unless permission has been obtained from the appropriate regulatory agency, the use is not within 100 feet of existing streams or 300 feet of existing drinking water wells, floodplains, or wetlands;

(d) The generator characterizes the nonhazardous nature of the coal combustion by-products; and

(e) The generator submits to the cabinet an annual report that identifies the;

1. Type and amount of coal combustion by-products released for reuse;

2. the Name and address of each recipient of coal combustion by-products; and

3. the Specific use, if known, of each recipient made of the coal combustion by-products.

Section 2. Noncompliances. (1) A special waste permit-by-rule site or facility that is not operating in compliance with Section 1 of this administrative regulation shall be subject to appropriate enforcement action, including corrective action or revocation.

(2) The cabinet may require the owner or operator of a special waste permit-by-rule site or facility to upgrade the permit to a registered permit-by-rule if doing so will ensure that the requirements of this chapter and the environmental performance standards of 401 KAR 30:031 are met.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)**

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.43, 224.50, 224.99, 40 C.F.R. Part 258

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to promulgate administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes technical requirements applicable to the management of solid waste. This administrative regulation establishes definitions for[defines] terms used in the administrative regulations of 401 KAR Chapter 48[this chapter].

Section 1. Definitions. Unless otherwise specifically defined in

KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 48 shall have the meanings given in this section. (1) "100-year floodplain" means any land area that[which] is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) ~~"100-year flood"~~ means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) ~~"Above ground~~[Aboveground] tank" means a device meeting the definition of "tank" and that is situated so in the[such a] way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(3) ~~(4) "Active fault"~~ means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(5) ~~"Active life"~~ of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(4) ~~"Acute hazardous waste"~~ is defined by 401 KAR 39:005.

(5) ~~(6) "Active portion"~~ means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(7) ~~"Administrative application"~~ means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(8) ~~"Admixed liner"~~ means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) ~~"Agricultural waste"~~ means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(10) ~~"Airport"~~ means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(6) ~~(14) "Application"~~ means the form approved by the cabinet for applying for a permit, including any additions, revisions, or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(7) ~~(12) "Aquifer"~~ means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(8) ~~(13) "Attenuation"~~ means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(14) ~~"Authorized representative"~~ means the person responsible for the overall operation of a facility or an operational unit or part of a facility, including[such as] the plant manager, superintendent, or person of equivalent responsibility.

(9) ~~(15) "Base flood"~~ means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(16) ~~"Battery"~~ means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(17) ~~"Bird hazard"~~ means an increase in the likelihood of bird

and/or aircraft collisions that could/may cause damage to the aircraft or injury to its occupants.

(10)[(18)] "Cabinet" is defined by KRS 224.1-010(8)[shall have the meaning specified in KRS 224.01-010].

(11)[(19)] "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(12)[(20)] "Cell" means a portion of any landfill that/which is isolated, usually by means of an approved barrier.

(13)[(24)] "Certification" means a statement of professional opinion based upon knowledge and belief.

(14)[(22)] "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(23) "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material.

(24)] "Closure" is defined by KRS 224.1-010(4).

(15) "Closure care" means the routine care, maintenance, monitoring, and any required corrective action of a solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(16)[(25)] "Closure" shall have the meaning specified in KRS 224.01-010.

(26) "Coal mining solid waste" means solid waste, as defined by KRS 224.01-010, that is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(27) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming; that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(28) "Collection box" shall have the meaning specified in KRS 224.01-010.

(29) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(30) "Component" means either the tank or ancillary equipment of a tank system.

(31) "Compost" shall have the meaning specified in KRS 224.01-010.

(32) "Composting" shall have the meaning specified in KRS 224.01-010.

(33)] "Conditionally exempt small quantity generator" means "very small quantity generator" as defined by 40 C.F.R. 260.10.

(17)[:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed

in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(34) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(35)] "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of construction/demolition waste. The technical requirements for construction/demolition debris landfills are established/found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(18)[(36)] "Construction/demolition waste" means waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup.

(19)[(37)] "Construction materials" means nonhazardous non-soluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

(38)] "Contained landfill" means a solid waste site or facility that accepts solid waste for disposal that is located, designated, constructed, operated, maintained, and closed in accordance with. The technical requirements for contained landfills are found in] 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 through/to 401 KAR 48:090.

(20)[(39)] "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level established/specified in 401 KAR 30:031, [Sections 5 and 6 of] 401 KAR 47:030, Sections 5 and 6, or [Section 8 of] 401 KAR 39:090, Section 8[34:060];

(b) An increase in the concentration of that substance in the groundwater if/where the existing concentration of that substance exceeds the maximum contaminant level established/specified in 401 KAR 30:031, 401 KAR 47:030, or [Section 8 of] 401 KAR 39:090, Section 8[34:060]; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(21)[(40)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(22)[(41)] "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment that/which has the potential for endangering human health or/and the environment. Financial planning to identify resources for initiation of the [such] action is a part of contingency plan development.

(23)[(42)] "Convenience center" shall have the meaning specified in KRS 224.01-010.

(43)] "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(24)[(44)] "Demonstration" is defined by KRS 224.1-010(7)[shall have the meaning specified in KRS 224.01-010].

(25)[(45)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(46) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(47)] "Disease vector" means all insects, birds, or gnawing

animals, including[such as] rats, mice, or ground squirrels, which are capable of transmitting pathogens.

(26)[(48)] "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(27)[(49)] "Disposal" shall have the meaning specified in KRS 224.01-010.

(50) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(51) "Draft permit" shall have the same meaning as "proposed permit".

(52) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(53) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(54) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 U.S.C. 1536.

(55) "Engineer" shall have the meaning specified in KRS 322.010.

(28)[An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(56) "Ephemeral stream" means a stream that[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 that[which] has a channel bottom that is always above the local water table.

(29)[(57)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(58) "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990 and has not received the final layers of cover material.

(59) "Explosive gas" means methane (CH₄).

(30)[(60)] "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(61) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility consists[may consist] of several treatment, storage, or disposal operational units, including[such as] one (1) or more landfills, surface impoundments, or combination of them.

(31) "Facility structures" means any buildings, and sheds, or utility or drainage lines on the solid waste site or facility.

(32)[(62)] "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(63) "Final closure" of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030, and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(33)[(64)] "Flood plain" means areas adjoining inland waters that[which] are inundated by the base flood, unless otherwise established[specified] in 401 KAR 30:031 or 401 KAR 47:030, and includes:] 100-year floodplain and floodway.

(34)[(65)] "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(66) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(35)[(67)] "Free liquids" means liquids that[which] readily

separate from the solid portion of a waste under ambient temperature and pressure.

(36)[(68)] "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(37)[(69)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(38)[(70)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(39) "Hazardous waste" is defined by 401 KAR 39:005.

(40)[(74)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the Pleistocene to the present.

(41)[(72)] "Household solid waste" shall have the meaning specified in KRS 224.01-010.

(73) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(74) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(75) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(76) "Industrial solid waste" is defined by KRS 224.1-010(30)(a)(3) shall have the meaning specified in KRS 224.01-010.

(42)[(77)] "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

(78) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(79) "In-ground[Inground] tank" means a device meeting the definition of "tank" in this section and if[that whereby] a portion of the tank is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(43)[(80)] "Intermittent stream" means 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.

(44)[(84)] "Karst terrain" means a type of topography if[where] limestone, dolomite, or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(45)[(82)] "Key personnel" shall have the meaning specified in KRS 224.01-010.

(83) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and can[may] improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(46)[(84)] "Landfill" means a solid waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapters[Chapter] 47 and 48, and 401 KAR 30:031[, and receives a case-by-case design review by the cabinet].

(47)[(85)] "Lateral expansion" means a horizontal expansion of

the waste boundaries of an existing solid waste landfill unit.

(48)[(86)] "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from waste.

(49)[(87)] "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, that might include~~[including but not limited to]~~ a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility that~~[which]~~ restricts the movement of the wastes, waste constituents, or leachate.

(50)[(88)] "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases that~~[which]~~ will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(51)"Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(52)[(89)] "Major modification" means for solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(90) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(91) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(92) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(93) "Miscellaneous unit" means a solid waste management unit where waste is disposed and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 C.F.R. Part 146, or unit eligible for a research, development, and demonstration permit under section 3 of 401 KAR 47:150.

(94) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(53) "Nonputrescible" means not susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances including odors, gases, or other offensive conditions.

(54) [(95)] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(96) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(97) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

(98) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(99) "Newsprint" shall have the meaning specified in KRS 224.01-010.

(100)] "Notice of intent" means the standard forms for applying for a solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170, and 401 KAR 48:200.

(55)[(101)] "Off-site" means properties noncontiguous to the site.

(56)[(102)] "On-site" means on the same or geographically contiguous property that can~~[which may]~~ be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the person~~[which he]~~ controls and to which the public does not have access are~~[is]~~ also considered on-site property.

(57)[(103)] "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(58)[(104)] "Open dump" is defined by KRS 224.1-010(37) shall have the meaning specified in KRS 224.01-010.

(59)[(105)] "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external bottom of the tank cannot be visually inspected.

(106)] "Operational plan" means the approved plan of operations filed with the cabinet that~~[which]~~ describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(60)[(107)] "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(61)[(108)] "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(62)[(109)] "Perennial stream";

(a) 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 run-off; and

(b) Does not mean~~[. The term does not include]~~ "intermittent stream" or "ephemeral stream".

(63)[(110)] "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(111) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

(112)] "Permit";

(a) Means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations and~~[.]~~ the term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit; and

(b) Does not mean a~~[. The]~~ However, the term permit does not include draft permit or proposed permit.

(64)[(113)] "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(65)[(114)] "Person" is defined by KRS 224.1-010(16) shall have the meaning specified in KRS 224.01-010.

(66)[(115)] "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act can~~[may]~~ result in noncompliance with the requirements of the waste management administrative regulations.

(67)[(116)] "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(117)] "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet pursuant to KRS 224.10-100.

(68)[(118)] "Point source";

(a) Means any discernible, confined, and discrete conveyance that might include~~[including but not limited to]~~ any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or can~~[may]~~ be discharged; and

(b) Does not mean~~[. This term does not include]~~ return flows from irrigated agriculture.

(69)[(119)] "Pollutant" is defined by KRS 224.1-010(34) shall have the same meaning as KRS 224.01-010.

(70)[(120)] "Polychlorinated biphenyls" or "PCB" means

halogenated organic compounds defined in accordance with 40 C.F.R. 761.3[C.F.R. 761.2 as of July 1989].

(71)[(124)] "Postclosure" shall have the same meaning as "closure care."

(72)[(122)] "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(123) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(124) "Postconsumer waste paper" shall have the meaning specified in KRS 224.01-010.

(125) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(126) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(127)[(118)] "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010(18) shall have the meaning specified in KRS 224.01-010.

(73)[(128)] "Publisher" shall have the meaning specified in KRS 224.01-010.

(129) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

(130) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(131) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(132) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(133)[(134)] "Recovered material" is defined by KRS 224.1-010(18) shall have the meaning specified in KRS 224.01-010.

(74)[(134)] "Recycled content" shall have the meaning specified in KRS 224.01-010.

(135) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(136) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(137) "Recycling" shall have the meaning specified in KRS 224.01-010.

(138) "Refuse-derived fuel" shall have the meaning specified in KRS 224.01-010.

(139) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

(140)[(141)] "Representative samples[sample]" means a sample of a universe or whole, including a[for example,] waste pile, lagoon, or groundwater[,] which can be expected to exhibit the average properties of the universe or whole.

(75)[(144)] "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

(142) "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.]

(143) "Residual landfill" means a facility for the disposal of specific solid waste or wastes[waste(s)], including special waste, which is located, designed, constructed, operated, maintained, and

closed in compliance[conformance] with 401 KAR 30:031 and 401 KAR 47:030 and that[which] receives a case-by-case design review by the cabinet.

(76)[(144)] "Resource recovery" means the recovery of material or energy from waste.

(145)[(147)] "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(77)[(146)] "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(78)[(147)] "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

(148) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(149) "Saturated zone" shall have the same meaning as "zone of saturation".

(150)[(151)] "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(79)[(151)] "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(152) "Secretary" shall have the meaning specified in KRS 224.01-010.

(153) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(154) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(80)[(155)] "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(156)[(156)] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(81)[(157)] "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(158)[(158)] "Solid waste" is defined by KRS 224.1-010(30)(a) shall have the same meaning as KRS 224.01-010.

(82)[(159)] "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.

(160) "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.

(161)[(161)] "Solid waste management" is defined by KRS 224.1-010(38) shall have the meaning specified in KRS 224.01-010.

(83)[(162)] "Solid waste site or facility" means any place at which solid waste is managed, processed, or disposed by landfilling, incineration, landfarming, or any other method. The term includes: construction/demolition debris landfill; collection box; contained landfill; convenience center; disposal facility; incinerator; injection well; landfarming facility; management facility; miscellaneous unit; municipal solid waste disposal facility; pile or waste pile; processing facility; recycling center; recycling facility; residual landfill; sanitary landfill; surface impoundment; tank; transfer facility; unit or solid waste unit; wastewater treatment unit; inert landfill; or residential landfill.

(84)[(163)] "Solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(85)[(164)] "State":

(a) Means any of the fifty (50) states, the District of Columbia,

the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam; and

(b) but does not include Any foreign country.

(86) [(465)] "Storage" is defined by KRS 224.1-010(27) [shall have the meaning specified in KRS 224.01-010].

(87) [(466)] "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(167) "Tank" means a stationary device designed to contain an accumulation of leachate or solid waste that is constructed primarily of nonearthen materials, including [(for example,] wood, concrete, steel, or plastic,)] which provide structural support.

(88) [(468)] "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.

(89) [(469)] "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(170) "Termination" shall have the meaning specified in KRS 224.01-010.

(171) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(172) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle. "TENORM" is defined by KRS 211.862(13), except as established in KRS 211.863(5).

(90) [(473)] "Transportation" is defined by KRS 224.1-010(28) [shall have the meaning specified in KRS 224.01-010].

(91) [(474)] "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(175) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(176) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(177) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(178) "Unit" shall have the same meaning as "Solid Waste Unit".

(179) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(180) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(181) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(92) [(482)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(93) [(483)] "Washout" means the carrying away of waste by waters as a result of flooding.

(94) "Waste" is defined by KRS 224.1-010(30).

(95) [(484)] "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for

human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(185) "Waste disposal facility" shall have the same meaning as KRS 224.40-310.

(96) [(486)] "Waste management district" shall have the meaning specified in KRS 224.01-010.

(187) "Waste pile" shall have the same meaning as "pile".

(188) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

(189) "Waste" shall have the meaning specified in KRS 224.01-010.

(190) "Wastewater treatment plant [unit]" is defined by 401 KAR 5:002 [means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste].

(97) [(491)] "Water pollution" shall have the meaning specified in KRS 224.01-010.

(192) "Water" or "waters of the Commonwealth" is defined by KRS 224.1-010(32) [shall have the meaning specified in KRS 224.01-010].

(98) [(493)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(99) Wetland [(494)] "Wetlands" means land that has a predominance of hydric soils and 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. [(195) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(196) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

(197) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 48 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations	
ASTM	American Society for Testing Materials
C.F.R.	Code of Federal Regulations
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DEP	Kentucky Department for Environmental Protection
EPA	United States Environmental Protection Agency
KAR	Kentucky Administrative Regulation
Kg	Kilogram

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
l	Liter
MCL	Maximum Contaminant Level
Mg	milligram
NPDES	National Pollutant and Discharge Elimination System
OSHA	U.S. Occupational Safety and Health Administration
PCB	Polychlorinated biphenyl
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
SCS	Soil Conservation Service
U.S. EPA	United States Environmental Protection Agency
USDA	United States Department of Agriculture

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 12, 2017

FILED WITH LRC: July 13, 2017 at 4 p.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of, Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, November 13, 2017)**

401 KAR 48:090. Operating requirements for contained landfills.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.43, 224.99, 40 C.F.R. Part 761

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. **401 KAR Chapter 48**~~[This chapter]~~ establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation ~~establishes~~[sets forth] the requirements for contained landfills.

Section 1. General. The owner or operator of a contained landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and 401 KAR Chapters 30 through 49~~[the administrative regulations promulgated pursuant thereto]~~, the conditions of the solid waste permit issued by the cabinet, and the approved application filed with the cabinet.

Section 2. Procedures for Excluding the Receipt of ~~Prohibited~~[Hazardous] Waste. (1) The owner or operator of a solid waste contained landfill shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as ~~established~~[defined] in 401 KAR Chapter 39,^[34] polychlorinated biphenyls (PCB) wastes as ~~established~~[defined] in 40 C.F.R. Part 761, and TENORM waste generated from oil and gas development activities containing combined Radium 226 and Radium 228 at concentrations exceeding limits established by 902 KAR 100:180, Section 6(1), except as authorized by 902 KAR 100:180, Section 6(2). This program shall include, at a minimum:

- (a) Random inspections of incoming loads;
- (b) Inspection of suspicious loads;
- (c) Records of any inspections;
- (d) Training of facility personnel to recognize regulated hazardous waste; and
- (e) Procedures for notifying the proper authorities if a ~~prohibited~~[regulated hazardous] waste is ~~disposed~~ or discovered at

the facility; and

(f) Employee safety, health, training, and equipment to be used in inspection.

(2) The owner or operator shall implement ~~[the following]~~ additional inspection standards to meet the requirements of subsection (1) of this section.~~;~~

(a) The owner or operator shall have a program, approved by the cabinet pursuant to KRS 224.10-100, to inspect all waste entering a contained landfill. The program to exclude hazardous wastes shall include:

1. Random inspections in time, but uniformly distributed to all waste sources based on volume; and

2. Identification data concerning the hauler on the operating inspection record including name of the driver, name of the hauler, address, source, volume, and waste characteristics. The owner or operator shall maintain a record of the inspections in accordance with the approved recordkeeping requirements.

(b) Upon discovery of hazardous waste, the owner or operator of a contained landfill shall isolate the load and notify the cabinet immediately.

Section 3. TENORM Waste Disposal from Oil and Gas Development and Production. (1) TENORM that meets the criteria established in 902 KAR 100:180, Section **6(1) that is to be land disposed**~~[6(1)(a)]~~ shall be disposed:

(a) In a contained landfill permitted in accordance with 401 KAR Chapters 47 and 48 **and as authorized by 902 KAR 100:180, Section 6(1)(a);**~~or~~

(b) As established in subsection (2) of this section as authorized by 902 KAR 100:180, Section 6(1)(c).

(2) TENORM that meets the criteria established in 902 KAR 100:180, Section **6(2) that is to be land disposed**~~[6(2)(a)]~~ shall be disposed in a contained landfill permitted in accordance with 401 KAR Chapters 47 and 48 **and as authorized by 902 KAR 100:180, Section 6(2)(a)** that meets:

(a) The operating requirements established in 902 KAR 100:180; and

(b) Final cap design requirements established in 401 KAR 48:080, Section 8, which shall include both a synthetic liner established in 401 KAR 48:080, Section 9(5) and a low permeability soil layer meeting the design standards in 401 KAR 48:080, Section 8(4) or Section 11.

(3)(a) A contained landfill shall not accept TENORM waste established~~[described]~~ in 902 KAR 100:180, Sections 6(1) or 6(2) without having received approval from the cabinet **except as established in subsection (b) of this section.**

(b) An owner or operator of a contained landfill that possesses a solid waste permit and began accepting TENORM waste ~~established~~~~[described]~~ in 902 KAR 100:180, Sections 6(1) or 6(2) before October 1, 2017 and will continue to accept the TENORM waste shall:

1. **Manage the TENORM waste in accordance with 902 KAR 100:180 and 401 KAR Chapters 47 and 48;**

2. **Submit an application for a minor permit modification by July 1, 2018; and**

3. **Not accept TENORM waste described in 902 KAR 100:180, Sections 6(1) or (6)(2) after January 1, 2019 without having received approval from the cabinet of the permit modification required in subparagraph 2. of this paragraph and paragraphs (c) and (d) of this subsection.**

(c) For TENORM waste that complies with the criteria established in 902 KAR 100:180, Section 6(2), the minor permit modification requirements established in 401 KAR 47:130 and paragraph (b)2 of this subsection shall also include:

1. **A public notice as established in 401 KAR 47:140, Section 7; and**

2. **A public comment period of thirty (30) days from the date of public notice to submit written comments on the application.**

(d) **Upon receipt of an application, the cabinet shall notify the local county government in the county where the disposal of TENORM waste that complies with the criteria established in 902 KAR 100:180, Section 6(2) is proposed.**

Section 4[3]. Cover Material and Disease Vector Control Requirements. (1)(a)[Daily cover.]

1. To control disease, fires, blowing litter, and disease vectors, the owner or operator shall place a minimum of six (6) inches of cover over all exposed solid waste at the end of each working day or, for continuously operating landfills, once every twenty-four (24) hours.~~[The purpose of this cover shall be to control disease, fires, blowing litter, and disease vectors.]~~

2. The owner or operator shall only use soil or properly weathered or crushed shales, siltstones, or other materials as approved by the cabinet pursuant to KRS 224.10-100.

3. Soils and other weathered, earthen~~[earthened]~~ material~~[that have been]~~ contaminated with petroleum may be used as daily cover if:

a. The~~[the]~~ maximum benzene concentration of the material is less than or equal to one and zero-tenths (1.0) ppm; and

b. The~~[if the]~~ material is not placed as daily cover during a precipitation event.~~[;]~~

(b) The daily cover for material subject to 902 KAR 100:180 shall be an additional six (6) inches of cover for a total minimum of twelve (12) inches of cover over all exposed waste containing TENORM at the end of each working day or for continuously operating landfills, once every twenty-four (24) hours.

(c)~~[(b)]~~ The daily cover shall not have any protruding waste, except for the occasional litter embedded into the surface, which shall not exceed ten (10) percent of the cover area.~~[;]~~

(d)~~[(e)]~~ Daily cover shall be compacted upon application and provide positive drainage. The owner or operator shall place daily cover to allow for proper drainage and shall immediately compact and grade the soil.~~[;]~~

(e)~~[(d)]~~ The owner or operator may remove daily cover to facilitate the vertical passage of methane gas and leachate and shall recover the exposed areas within eight (8) hours of exposure. Daily cover required by subsection (b) of this section shall not be removed.~~[; and]~~

(f)~~[(e)]~~ The owner or operator shall dispose of any daily cover removed as established in paragraph~~[under subsection (1)]~~ (d) of this ~~subsection~~~~[section]~~ as solid waste.

(2) Interim cover period. The owner or operator~~[shall]~~:

(a) 1. Shall place~~[Place]~~ an additional six (6) inches of interim cover over any area that will~~[shall]~~ not receive additional solid waste within thirty (30) calendar days of the last waste placement.

2. With the daily cover applied in accordance with subsection (1) of ~~this~~~~[the]~~ section, the additional interim cover shall increase the total cover depth to twelve (12) inches;

(b) May, on the day waste is to be placed over an area that is covered with daily and interim cover,~~[an owner or operator may]~~ remove a maximum depth of six (6) inches of interim cover over the area of the cell for that day's operation;

(c) Shall place, compact, and grade the interim cover to effect proper drainage; and

(d) Shall apply temporary erosion controls at the time of placing interim cover.

(3) Long term cover. The owner or operator:

(a) Shall apply an additional eighteen (18) inches of long-term cover over all areas that shall not receive additional waste within four (4) months by September 15 of each year. With the daily and interim cover, the total thickness of the cover in these areas shall be thirty (30) inches;

(b) May remove a maximum of eighteen (18) inches of the thirty (30) inches of cover in this subsection within the seven (7) calendar days prior to additional waste placement. The owner or operator may remove remaining soil leaving no less than six (6) inches of daily cover from the daily cell area on the day additional waste is to be placed;

(c) Shall place, compact, and grade the long term cover to effect proper drainage; and

(d) Shall complete erosion controls and~~[proper]~~ seeding of interim and long-term cover during the fall seeding season.

(4) Final cover.

(a) The owner shall initiate the application of final cover:

1.~~[(a)]~~ Within thirty (30) days of filling a completed phase of the landfill to final design grade; and

2.~~[(b)]~~ Annually so~~[such]~~ that the final cap is in place by

September 15 in all areas of the landfill that have reached final grade by August 15 of each year.

(b)~~[(e)]~~ An alternate schedule may be approved by the cabinet ~~if~~~~[when]~~ construction techniques shall preclude construction by the ~~[above-referenced]~~ dates established in paragraph (a) of this subsection.

(5) Cover report. The owner or operator shall record, on a form approved by the cabinet pursuant to KRS 224.10-100, the daily cell locations, specific location of TENORM waste placement within the cell, and dates of cover applications at the landfill including:

(a) Daily usage area.~~[;]~~

(b) Daily, interim, long term, and final cap installation dates; and

(c) Certification~~[certification]~~ reports.

Section 5[4]. Explosive Gases Control. (1) The owner or operator of a contained solid waste landfill shall ensure that the concentration of methane gas:

(a) Generated~~[The concentration of methane gas generated]~~ by the facility does not exceed twenty-five (25) percent of the lower explosive limits (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(b) Does~~[The concentration of methane gas does]~~ not exceed the lower explosive limit for methane at the facility property boundary.

(2) The owner or operator of a contained landfill shall quarterly monitor for explosive gas~~[at the following locations]~~:

(a) Underneath or in the low area of each on-site building;

(b) At locations along the boundary as shown in the permit;

(c) At each gas passive vent installed under the final closure cap;

(d) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and

(e) At any other points required by the permit.

(3) The owner or operator shall record the date, time, location, percent lower explosive limit, and other pertinent information on the recordkeeping form approved by the cabinet pursuant to KRS 224.10-100.

(4) The owner or operator shall install, operate, and maintain a gas detector with an alarm set at twenty-five (25) percent of the lower explosive limit in each on-site building.

(5) If methane gas levels exceeding the limits~~[specified]~~ in subsection (1) of this section are detected, the owner or operator shall:

(a) Take all necessary steps to ensure immediate protection of human health;

(b) Immediately notify the cabinet of the methane gas levels detected and the immediate steps taken to protect human health; and

(c) Within fourteen (14) days, submit to the cabinet for approval a remediation plan for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the cabinet pursuant to KRS 224.10-100.

Section 6[5]. Air Criteria. (1) Except as established in paragraph (b) of this subsection, the owner or operators of contained landfills shall not allow~~[permit]~~ or engage in open burning of waste. Any open burning shall be immediately extinguished.

(a) Wastes that are burning or smoldering shall not be deposited in the fill. The~~[Such]~~ materials shall be deposited in a hot load area designated in the permit.

(b) The cabinet may grant emergency permission to burn in accordance with 401 KAR 47:150. The owner or operator shall follow the plan approved for ~~these~~~~[such]~~ purposes.

(2) The owner or operator shall~~[properly]~~ control dust on haul roads and other areas to prevent a nuisance to surrounding areas.

Section 7[6]. Access Requirements. (1) The owner or operator of a contained solid waste landfill shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes to protect human health and the environment.

(a) The owner or operator shall use artificial barriers, natural

barriers, or both, as appropriate.

(b) Each access point shall be controlled by lockable entrance ways.

(2) The owner or operator shall construct and maintain:

(a) ~~Lockable entrance ways at all access points;~~

(b) The major access road from a publicly maintained highway to the landfill;

(b) ~~(e)~~ The perimeter road; and

(c) ~~(d)~~ An all-weather road to within 200 feet of the working face.

(3) ~~(a)~~ The owner or operator of a contained landfill shall remove debris, mud, and waste from vehicles before leaving the site.

(b) The owner or operator shall be responsible for removing landfill debris, mud, and waste from off-site roadways.

Section 8~~[7]~~. Water Controls. The owner or operator of a contained solid waste landfill shall:

(1) Maintain the site as necessary to prevent erosion or washing of the fill, and grade as necessary to drain rainwater from the fill area and to prevent standing water~~[-]~~;

(2) Maintain all run-on and run-off control systems as necessary to maintain original design capacity as required by ~~Section 2 of~~ 401 KAR 48:070, Section 2. This can include ~~includes, but shall not be limited to~~:

(a) Removal of sediment from run-off control structures. The site design shall specify the method to be used to determine the removal in the event that ~~when~~ clean-out shall occur;

(b) Removal of debris, wastes, and soil from diversion and run-off ditches to maintain the design capacity; and

(c) Construction and maintenance of temporary diversion ditches around the current working face.

1. The owner or operator shall specify the location of the temporary ditches in the operational plan required by 401 KAR 47:190.

2. ~~The~~ ~~and the~~ ditches shall be approved by a professional engineer registered in the Commonwealth of Kentucky.

Section 9~~[8]~~. Waste Restrictions. (1) The owner or operator of a contained landfill shall only dispose of wastes that:

(a) Are not hazardous wastes regulated pursuant to 401 KAR Chapters 30 and 39 ~~through 40~~, except for limited quantity hazardous wastes and exempt spill residues;

(b) Do not contain free liquids as determined by the cabinet pursuant to KRS 224.10-100; and

(c) Are specified in the approved permit application.

(2) The owner or operator shall comply with the recordkeeping and reporting requirements ~~requirement~~ of Section 11 of this administrative regulation pertaining to the location of disposed limited quantity hazardous waste and exempt spill residues.

Section 10~~[9]~~. Working Face Requirements. (1) Within two (2) hours of receipt, the owner or operator shall spread wastes in loose layers not exceeding twenty-four (24) inches in depth and compact it to the maximum practicable density.

(a) The owner or operator shall use the equipment specified in the permit for compaction.

(b) The operator shall pass the equipment over 100 percent of the waste surface at least four (4) times.

(c) Each loose layer shall be fully compacted before any additional waste is placed.

(2) The owner or operator shall not exceed the lift height specified in the permit.

(3) The owner or operator shall not place an initial lift containing any object that may damage the bottom liner. The owner or operator shall protect the liner system with a layer of dirt, waste, or similar blanket placed between operating equipment and the liner.

(4) The daily working face shall be restricted to the smallest area practical for working face operation.

(5) The completed cell shall consist of the solid waste compacted during one (1) working day.

(6) ~~(a)~~ The owner or operator shall prohibit scavenging within 100 feet of the working face.

(b) All salvage and recycling shall occur at areas so designated in the permit.

(7) The owner or operator shall only allow access to the landfill ~~if~~ ~~when~~ operating personnel are on the site.

(8) The owner or operator shall not accept solid waste at a rate that exceeds the rated capability of the operational compaction and cover equipment available on site.

(9) The owner or operator shall not accept solid waste without landfill personnel present to supervise the unloading.

(10) The grounds in and about a landfill shall not be allowed to become a nuisance.

(a) ~~If~~ ~~when~~ necessary, interior fences may be required to prevent litter from blowing from the landfill.

(b) The permitted area shall be policed on a routine basis to collect all scattered material.

(11) All litter attributable to the site's operation shall be picked up within forty-eight (48) hours.

(12) Unless excluded from the site, large bulky items and other nonresidential wastes shall be deposited in a manner approved by the cabinet pursuant to KRS 224.10-100.

(13) The owner or operator shall conform to the posted operating hours for receiving waste and shall notify the cabinet of the operating hours before changing them. The entrance sign shall meet the requirements of Section 15(2) ~~14(2)~~ of this administrative regulation.

Section 11~~[10]~~. Employee Facilities. (1) The owner or operator of a contained landfill shall provide buildings meeting ~~Section 9 of~~ 401 KAR 48:070, Section 9 requirements for site personnel.

(2) The buildings shall be maintained in a safe and sanitary manner.

(3) At least one (1) building shall have a safe drinking water supply, pursuant to 401 KAR Chapter 8.

Section 12~~[11]~~. Reports and Recordkeeping. Records and reports shall be maintained and submitted in accordance with ~~Section 8 of~~ 401 KAR 47:190, Section 8.

Section 13~~[12]~~. Groundwater Monitoring. The owner or operator of a contained solid waste landfill shall implement the groundwater monitoring program in the approved application.

Section 14~~[13]~~. Closure and Closure Care Requirements. (1) The owner or operator shall comply with ~~the~~ ~~these~~ ~~the following~~ closure requirements established in paragraphs (a) and (b) of this subsection ~~[-]~~:

(a) The owner ~~or~~ ~~/~~ operator of a contained landfill shall prepare a written closure plan that describes the closure activities for each unit including ~~the following~~:

1. a. The methods to be employed to maintain the integrity and effectiveness of any final cap, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cap; and ~~[-]~~:

b. The layer established ~~addressed~~ in ~~Section 8(4) of~~ 401 KAR 48:080, Section 8(4) shall have a maximum permeability less than or equal to the permeability of any bottom liner system or natural subsoils present;

2. Maintenance and operation of the leachate collection system in accordance with the requirements, if applicable, until leachate no longer is generated;

3. Groundwater monitoring in accordance with the requirements of 401 KAR 48:300 and maintaining the groundwater monitoring system; and

4. Maintenance and operation of the explosive gas monitoring system in accordance with the requirements of Section 5 ~~4~~ of this administrative regulation.

(b) The closure period shall be at least two (2) years following the cabinet's acceptance of the owner's ~~owners~~ certification of closure.

(2) The owner or operator of a contained landfill shall prepare and implement a written closure care plan that describes monitoring and routine maintenance activities that shall be carried out during the closure care period of at least thirty (30) years. The

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

closure care plan shall include, at a minimum~~the following information~~:

(a) A description of the monitoring and maintenance activities for each unit and the frequency at which these activities shall be performed;

(b) ~~The~~ name, address, and telephone number of the person or office to contact about the facility during the closure care period; and

(c) A description of the planned uses of the property during the closure care period.

1. Closure care use of the property shall not~~be allowed to~~ disturb the integrity of the final cap, liner or liners~~liner(s)~~, or any other components of the containment system, or the function of the monitoring systems, unless upon demonstration by the owner or operator, the cabinet determines that the activities shall not increase the potential threat to human health or the environment or the disturbance is necessary to reduce a threat to human health or the environment.

2. The owner or operator shall obtain approval from the cabinet in order to remove any wastes or waste residues, the liner, or contaminated soils from the land.

(3) The closure care plan shall be submitted with the permit application and shall be approved by the cabinet pursuant to KRS 224.10-100.

(a) Any subsequent modification to the closure care plan also shall be approved~~proved~~ by the cabinet pursuant to 401 KAR 47:130.

(b) A copy of the most recently approved closure care plan shall be kept at the facility at least until completion of the closure care period has been certified in accordance with subsection (5) of this section.

(4)(a) The owner or operator shall record a notice in the deed that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, the nature of the waste placed in the site, and a caution against future disturbance of the area.

(b) ~~The~~~~Such~~ notice shall be recorded in accordance with KRS Chapter 382, and proof of recording shall be submitted to the cabinet prior to the cabinet's acceptance of certification of closure.

(5) Following completion of all closure and closure care periods for each unit, the owner or operator of a contained landfill shall submit to the cabinet certification by a professional engineer, verifying that all phases of closure and closure care have been completed in accordance with the approved plans and the requirements of KRS Chapter 224.

Section 15~~[14]~~. Signs. (1) Warning signs shall be visible at all landfill access points.

(a) The warning signs shall be legible~~readable~~ at a distance of 100 feet.

(b) The signs shall give warnings of all site hazards that might include~~including but not limited to~~: explosive gases, heavy equipment movement, and heavy truck movements.

(2) Entrance signs shall be visible and~~;~~ located at the public entrances and all entrances used by waste hauling vehicles.

(a) The signs shall be legible~~readable~~ from 100 feet.

(b) The signs~~They~~ shall indicate landfill name, name of the owner, name of the operator, the hours of receiving wastes, the permit number, and an emergency telephone number.

Section 16~~[15]~~. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that the alternatives~~they~~ shall result in performance, with regard to safety, stability, and environmental protection, equal to or better than that resulting from designs complying with the requirements~~specifications~~ of this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second

Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(As Amended at ARRS, November 13, 2017)

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. Chapter 25, 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 could~~may~~ be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrative hearing" means a formal adjudicatory hearing conducted before the cabinet 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:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) 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 established~~provided~~ in this definition;

(e) 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, or shipping areas;

(f) 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;

(g)~~and~~ The area located above underground workings associated with underground mining activities;

(h)~~;~~ Auger mining~~;~~ or in situ mining; and

(i)~~;~~ 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:

1.~~(a)~~ Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

2.~~(b)~~ Is maintained with public funds~~;~~ and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3.~~(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 is established in~~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 ~~that~~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 is~~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":

(a) Means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds; and

(b)~~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 are~~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", including~~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 could[may] be identified in combination when joint or seasonal uses occur and can[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 400 KAR 1:090 and 400 KAR 1:110[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 pursuant to/under 405 KAR Chapter 10 and that[which] includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to/under the permit, including all disturbed areas; provided that Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could[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":

(a) 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; **and**

(b) [The term] Does not mean [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":

(a) 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; **and**

(b) Does not mean [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 areas [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. **Could** [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, 30 U.S.C. Chapter 25 [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 **is to** [shall] be interpreted broadly and **includes activities such as** [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 2,000 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: October 11, 2017
FILED WITH LRC: October 13, 2017 at 10 a.m.
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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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) requires[directs] the cabinet to promulgate an administrative regulation establishing[setting forth] the method for calculating monetary penalties. This administrative regulation establishes how and when penalties shall[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 Shall Befare 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 established in 400 KAR 1:110[described in 405 KAR 7:092] and this administrative regulation to determine if[whether] a civil penalty shall[will] be assessed, the amount of the penalty, and if[whether] each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Section 2. Conditions for Penalty Assessment[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 established[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 established[described] in Section 3 of this administrative regulation. In determining if[whether to assess] a penalty shall be assessed, the cabinet shall consider the factors listed in 400 KAR 1:110[405 KAR 7:092], Section 3(2).

Section 3. Point System for Penalties. The cabinet shall use the point system established[described] in this section to determine the amount of any penalty. Points shall be assigned as established in subsections (1) through (4) of this section.[follows:]

(1) History of previous violations.

(a)1. 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.

2. Five (5) points shall be assigned for each violation~~[(but not a condition or practice)]~~ cited in an order of cessation and immediate compliance.

(b) 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 established in subparagraphs 1. through 3. of this paragraph.

1.[follows:]

(a)1 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.

2. A(b) No violation for which the notice or order has been vacated shall not be counted.

3.[; and

(e)1 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 established in paragraphs (a) through (c) of this subsection.[follows:]

(a) Probability of occurrence. The cabinet shall assign up to fifteen (15) points based on the probability of the occurrence of the event that[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:and[;]

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 established in subparagraphs 1. and 2. of this paragraph.[follows:]

1. If the damage or impact that[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 that[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 that[which] led to the notice or order, either through act or omission. Points shall be assessed as established in paragraphs (a) through (c) of this subsection.[follows:]

(a) A violation, condition, or practice that[which] occurs through “no negligence” shall not be assigned~~[no]~~ penalty points for negligence. “No negligence” shall include[means] an inadvertent violation, condition, or practice that[which] was unavoidable by the exercise of reasonable care.

(b) A violation, condition, or practice that[which] is caused by “negligence” shall be assigned twelve (12) points or less, depending on the degree of negligence. “Negligence” shall include[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 that[which] occurs through a greater degree of fault than negligence shall be assigned

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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 established in paragraphs (a) and (b) of this subsection.~~[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 pursuant to~~[under]~~ Section 3 of this administrative regulation to a dollar amount, according to the schedule established in this section.

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

~~[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.

(a) In determining whether or not to make such an assessment, the cabinet shall consider the factors established in

400 KAR 1:110~~[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.

(b) For any violation that~~[which]~~ continues for two (2) or more days and that~~[which]~~ is assigned more than seventy (70) points pursuant to~~[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 process established~~[provided for]~~ in subsection (1) of this section, if~~[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 the~~[such]~~ failure continues according to the provisions of 400 KAR 1:110~~[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 established~~[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.

(a)~~[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.

(b) The basis for every waiver shall be fully explained and documented in the records of the case.

(2)(a) If the cabinet waives the use of the point system, the cabinet~~[it]~~ shall use the criteria established in 400 KAR 1:110~~[set forth in 405 KAR 7:092]~~, Section 3(2) to determine the appropriate penalty.

(b) If~~[When]~~ the cabinet has elected to waive the use of the point system, 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. Incorporation by Reference. (1) "Procedures for Assessment of Civil Penalties", 1995, is incorporated by reference.

(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.~~[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

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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.

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)**

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. Chapter 25, 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 and zero-tenths (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 could[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 that[which] is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) 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 established[provided] in this definition;

(e) 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, or shipping areas;

(f) 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;

(g)[and] The area located above underground workings associated with underground mining activities;

(h)[,] Auger mining[,] or in situ mining; and

(i). 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:

1.[(a)] Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

2.[(b)] Is maintained with public funds[,], and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3.[(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 405 KAR Chapter 24[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 by[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 and[,] secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques;

(a) That[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 if practicable;

(b) That[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; and

~~(c) [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 by/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 pursuant to/under the requirements of 405 KAR Chapters 7 through 24 if the activity could/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 that/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 if/whether a permit or exploration approval could/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 could/may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining includes/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 that/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 that/which has a channel bottom that is always above the local water table.

(36) "Excess spoil":

(a) Means spoil disposed of in a location other than the coal extraction area; and

(b) Does not mean [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":

(a) 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; and (b) [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 that/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 that/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 that lands have

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) Lands meeting either paragraph (a)1. or 2. of this subsection are considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands are considered "historically used for cropland," including:

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[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; or;

(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 stream or reach of a stream that:

(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 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 could[may] be identified in combination when joint or seasonal uses occur and could[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":

(a) 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; and

(b) Does not mean[-] 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 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 [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 includes[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":

(a) 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; and

(b) Does not mean[.] any structure used only for commercial agricultural, industrial, retail or other commercial purposes [is excluded].

(70) "Operations" is defined by[is] KRS 350.010.

(71) "Operator" is defined by[is] 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 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.

(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 by[is] KRS 350.010.

(76) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships established[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; and[.]

(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":

(a) 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; and

(b) Does not mean[. 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 that[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 pursuant to[under] 405 KAR Chapter 10 and that[which] shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to[under] the permit, including all disturbed areas~~[.]~~; provided that Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could[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 by[is] KRS 350.010.

(85) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" includes[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 that[which] have been "historically used for cropland" as that phrase is defined in this section[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

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.

(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 that[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, regardless of if[despite whether] the use is limited to certain times or days. The term[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 by[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 pursuant to 405 KAR 16:200 and 18:200.

(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 that[which] affect previously mined areas.

(103) "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas that[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; and[.]

(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":

(a) 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; and

(b)[. The term] Does not mean[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 by[in] KRS 350.010.

(108) "Sedimentation pond":

(a) Means a primary sediment control structure:

1. (a)] Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090; and

2. (b)] That could[may] include a barrier, dam, or excavated depression to:

1. Slow water runoff; and

2. Allow suspended solids to settle out; and

(b) Does not mean(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 areas[disturbances] associated with auger and in situ mining.

(110) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources including[which resources include, but are not limited to,] plant and animal life as further defined in paragraphs (a) and (b) of this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists that[which]:

1. Is causing environmental harm; or

2. Could[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; and[.]

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(111)[(440)] "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 could[may] also be expressed as a percent or in degrees.

(112)[(444)] "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)[(442)] "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined by[at] KRS 350.450(4)(c).

(114)[(443)] "SMCRA" means Surface Mining Control and Reclamation Act, 30 U.S.C. Chapter 25[of 1977 (PL 95-87), as amended].

(115)[(444)] "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.

(116)[(445)] "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)[(446)] "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)[(417)] "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)[(448)] "Steep slope" means any slope of more than twenty (20) degrees.

(120)[(449)](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; ~~and~~;

(b) Does not mean the costs of acquiring the coal in place or the right to mine such coal in the absence of other investments as established~~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)[(429)] "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)[(424)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(123)[(422)] "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)[(423)] "Surface coal mining and reclamation operations" is defined by/in KRS 350.010.

(125)[(424)] "Surface coal mining operations" is defined by/in KRS 350.010.

(126)[(425)] "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)[(426)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water that/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)[(427)] "Temporary diversion" means a diversion of a stream or overland flow that/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)[(428)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(130)[(429)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(131)[(430)] "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)[(434)] "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)[(432)] "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)[(433)] "TRM" means Technical Reclamation Memorandum.

(135)[(434)] "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)[(435)] "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)[(436)] "USDA" means United States Department of Agriculture.

(138)[(437)] "U.S. EPA" means United States Environmental Protection Agency ~~[(133) "USGS" means United States Geological Survey]~~.

(139)[(438)] "USGS" means United States Geological Survey.

(140)[(439)] "Valid existing rights":

(a) Means:

1. [(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 that/which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

a. [(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

b. [(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;

2. [(b)] For haul roads:

a. [(1)] A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

b. [(2)] Any other road in existence as of August 3, 1977; and

(b) Does not mean:

(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)[(440)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks that/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)[(444)] "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: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 the conditions for which[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 operation[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 pursuant to 405 KAR Chapters 7 through 24.

(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, ~~[54 U.S.C. 300101 - 307108]~~~~[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 agree are[deem] appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit may[shall] 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 pursuant to/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 the applicant[himself] or some other person to/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 established/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.

(a) 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.

(b) 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 the applicant's[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 ~~shall be~~^{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 ~~the~~:

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. U.S. Department of Fish and Wildlife and Kentucky Department of Fish and Wildlife Resources~~[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 the public agency's~~[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 ~~shall~~**[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;~~;~~**and**~~;~~**]**

(d) The requirements of **405 KAR 1:090 and 1:110[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.

1. 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.

2. 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 **400 KAR 1:110[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)**1.** 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.

2. 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)**1.** 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.

2. 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 in which[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)[4] of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1.[(a)4] of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal established[described] in paragraph (a)2 of this subsection, shall be conditionally issued.

(e) 1. If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator established[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.

2. 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 400 KAR 1:110[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 for shadow area is:

(a) Not included within an area designated unsuitable for surface coal mining operations pursuant to[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 established[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 established[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 not necessary;

(6) For operations involving the surface mining of coal in which[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 established in 405 KAR 16:210 and 405 KAR 18:220 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 remining 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 ~~established[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 ~~established[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 ~~established[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 ~~established[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; ~~and~~;

(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 ~~approves[decides to approve]~~ the application, ~~the cabinet[if]~~ 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 ~~the[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 established in paragraphs (a) through (c) of this subsection 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 400 KAR 1:110[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 established[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 MPA-01 and MPA-03~~[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 pursuant to~~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 established~~[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) 1. The cabinet shall notify, in writing, those persons that could have an interest or may be adversely affected by the proposed change.

2. 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 if~~[that]~~ the proposed minor revision is a major revision and~~[it]~~ shall not be processed pursuant to this paragraph. The following proposals shall be a minor field revision:

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. 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.

b. 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~~[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, or[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, as established in paragraph (b) of this subsection, 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 established[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. As established in 405 KAR 7:040, Section 5, 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 an[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) 1. Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection.

2. 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, Section 3 and 8:040 shall be required, 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 **and the applicant shall submit. 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.

(a) 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.

(b) 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) 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.

(b) 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 **an/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 400 KAR 1:110[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 400 KAR 1:110[405 KAR 7:092], Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, October[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, October[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, October 2017[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: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 presubidence condition survey is required pursuant to 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 presubidence 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 presubidence condition of structures that may be damaged by subsidence. These surveys may be submitted after permit issuance and therefore are required pursuant to 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 pursuant to KRS 350.421, whereas the federal regulation applies to water supplies protected pursuant to 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 established/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 established/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 established/set 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 pursuant to 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, pursuant to 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 or 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.

(a) Updates shall be submitted for any changes that occur at any point prior to final bond release.

(b) 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.

(c) 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.

(d) The update shall include:

1. ~~(a)~~ The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

2. ~~(b)~~ The names and addresses of principal shareholders; and

3. ~~(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 ~~[of]~~ 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 ~~405 Chapters 7 through 24~~~~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 ~~pursuant to~~~~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 ~~pursuant to~~~~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 pursuant to 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 pursuant to 405 KAR Chapter 24 ~~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 shall ~~will~~ file a copy of the entire application for public inspection pursuant to 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 in accordance with 405 KAR 8:010, Section 8(4) and (5), 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 pursuant to 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 ensure ~~assure~~ protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be ensured ~~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 pursuant to 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 the sampling techniques established in Section 12(4) of this administrative regulation[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 demonstrates[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 pursuant to 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 pursuant to 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)(a) 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.

(b) 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 if/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)(a) Upon request, the cabinet shall provide the resource information required pursuant to this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review.

(b) 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 as established in 401 KAR 5 and 10;

3. Seek to obtain a stream buffer zone variance pursuant to 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 as established in

401 KAR 5 and 10, 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)~~(a)~~ 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.

~~(b)~~ 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 pursuant to[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 ~~and[.]~~

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required pursuant to[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 based on area size, 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 established[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 pursuant to[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 pursuant to[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 pursuant to[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 pursuant to[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 pursuant to 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.

(a) 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.

(b) 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.

(c) 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 pursuant to this paragraph, the report shall include the name of the person.

(a) 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.

(b) 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 pursuant to 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,~~ based on site-specific information, if the cabinet agrees with this conclusion, no further information shall be required pursuant to 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 pursuant to[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, retention 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. (1) 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.

(2) 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 pursuant to[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 pursuant to[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 pursuant to[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 pursuant to[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, pursuant to[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 established[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 established pursuant to [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 pursuant to [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 [f;] 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 pursuant to [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:

1. Copy of the final approved plan;
2. [f; a] Copy of all correspondence from MSHA regarding the plan;
3. [f; a] Copy of any technical support documents requested by MSHA during its review; [f;] and
4. [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.

[a] Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160.

[b] The plan for an impounding structure that is required to be submitted to the District Manager of MSHA pursuant to [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.

[d] 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.

(e) The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to subparagraphs 1. through 4. of this paragraph:

1.[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.

2.[(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.

3.[(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.

4.[(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 pursuant to[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 pursuant to[under] subsections (2), (3), and (5) of this section shall include a stability analysis of the structure.

(a) The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions.

(b) 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, pursuant to[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 pursuant to[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 pursuant to[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 pursuant to[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 pursuant to[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 pursuant to[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:

(a)[f.] Information establishing[setting forth] the limitations the permittee shall meet with regard to ground vibration and airblast;

(b)[f.] The bases for the ground vibration and airblast limitations;f.] and

(c) 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 in accordance with 805 KAR Chapter 4 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.

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.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(As Amended at ARRS, November 13, 2017)

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]13A, 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 establishes[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 establishes[sets forth] the only variance from the requirement to return to approximate original contour in steep slopes. This administrative regulation establishes[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. A permit shall not[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.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(b) 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.

(c) A permit shall not[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, ~~if provided that:~~

1. ~~a. The [Such]~~ lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977;

~~b. 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

~~c. [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;

~~2. [– 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; ~~and~~

~~3. [– 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; ~~and [.]~~

(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 ~~pursuant to [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 ~~established [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 ~~that establish [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 ~~shall comply with [must meet]~~ NCSS standards and shall include the name, address and qualifications of the soil scientist that prepared them. If ~~the [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 ~~if [whether]~~ reclaimed prime farmland areas have been restored to proper depth and meet other reconstruction standards of 405 KAR 20:040, Section 4.

3. ~~a.~~ Bulk density of the prime farmland soils prior to mining

shall be documented and included in the application.

~~b.~~ 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 ~~that [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; ~~and [.]~~

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 ~~shall [, 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 ~~pursuant to [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 ~~pursuant to [under]~~ subsection (2) of this section, after consideration of any revisions to that plan suggested

by the state conservationist pursuant to 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 established 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; and

(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; and

(c) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that the use shall 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; and

(d) The proposed use shall be consistent with adjacent land uses and existing state and local land use plans and programs; and

(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 that the cabinet, in its discretion, determines in accordance with 405 KAR 16:210 to have an interest in the proposed use; and

(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; and

(i) The permit is clearly identified as being for mountaintop removal mining.

(4) Periodic review.

(a) Any permits issued pursuant to 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 pursuant to 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 person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

(a) A case in which 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) A case in which a person obtains a permit pursuant to the provisions of Section 4 of this administrative regulation; or

(c) To the extent that a person obtains a permit incorporating a variance pursuant to 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) A permit shall not 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) Pursuant to 405 KAR 20:060, Section 3, 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 pursuant to this section:

(a) A statement shall be listed on the permit making the requirements of 405 KAR 20:060, Section 3 a specific condition; and

(b) The permit shall be specifically marked as containing a variance from approximate original contour.

(3) Periodic review.

(a) Except as established in paragraph (b) of this subsection, each permit incorporating a variance issued pursuant to 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 pursuant to/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 shall be/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 in which/where compliance with the time frames for reclamation as established/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 pursuant to/under this section shall file with the cabinet complete applications for both the surface mining activities and underground mining activities that/which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans that/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, pursuant to 405 KAR Chapters 7 through 24, 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 not 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 pursuant to/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 established/specified in 405 KAR 16:020, Section 2.

(4) Periodic review. A variance granted pursuant to a permit issued in accordance with/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 a coal processing plant/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 pursuant to/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, a person/all persons operating a coal processing plant who intends/intend to operate after August 1, 1986 shall file an initially complete (as established/defined in 405 KAR 8:010, Section 13(1)(a)) permit application pursuant to/under 405 KAR Chapters 7 through 24. A person shall not/No person may operate a coal processing plant after August 1, 1986 unless that operation is being conducted pursuant to/under a permit issued pursuant to/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 400 KAR 1:110/405 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 pursuant to/under 405 KAR Chapter 10 within sixty (60) calendar days of being served notice of the decision by the cabinet to issue the permit.

1./[Such] Notice shall be served in accordance with 400 KAR 1:110/405 KAR 7:092, Section 5.

2. If the performance bond is not filed within that time the cabinet shall deny the permit application.

(c) 1. Any time limits for cabinet action established/specified in 405 KAR 8:010 shall not apply to permit applications filed pursuant to this subsection.

2./under this subsection; provided, however, The cabinet

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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~~**Any-such** applicant failing to make a timely filing shall be required to submit this information.

(5) Criteria for approval. ~~A permit shall not~~**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. A permit shall be not be issued for an operation~~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. A permit~~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.

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.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(As Amended at ARRS, November 13, 2017)

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. **Chapter 25**, 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 **establishes definitions for**~~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 ~~could~~**may** be adversely impacted by surface coal mining and reclamation operations.

(5) "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:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) 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 **established**~~provided~~ in this definition;

(e) 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, or shipping areas;

(f) 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;

(g)~~and~~ The area located above underground workings associated with underground mining activities;

(h)~~;~~ Auger mining~~;~~ or in situ mining; and

(i)~~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:

1.~~(a)~~ Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

2.~~(b)~~ Is maintained with public funds~~;~~ and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3.~~(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 **by**~~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 ~~could~~**[may]** be identified in combination when joint or seasonal uses occur and ~~could~~**[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 ~~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.

(29) "Operations" is defined ~~by~~**[in]** KRS 350.010(6).

(30) "Operator" is defined ~~by~~**[in]** KRS 350.010 ~~(8)~~**(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 ~~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.

(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 ~~constitutes~~**[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 pursuant to~~**[under]** 405 KAR Chapter 10 and ~~that includes~~**[which shall include]** the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations ~~pursuant to~~**[under]** the permit, including all disturbed areas, ~~provided that~~ Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, ~~could~~**[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 by/in KRS 350.010(9).

(40) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" includes/shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that could/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 could/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 that/which have been "historically used for cropland"~~[as that phrase is defined above].~~

(42) "Reclamation" is defined by/in KRS 350.010(12).

(43) "Secretary" is defined by/in KRS 350.010(11).

(44) "SMCRA" means Surface Mining Control and Reclamation Act, 30 U.S.C. Chapter 25 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 by/in KRS 350.010(3).

(47) "Surface coal mining operations" is defined by/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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 establishes definitions for/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 could/may be adversely impacted by surface coal mining and reclamation operations.

(2) "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:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) 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 established/provided in this definition;

(e) 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, or shipping areas;

(f) 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;

(g)[and] The area located above underground workings associated with underground mining activities;

(h)[,] Auger mining~~[,]~~ or in situ mining; and

(i)[. 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:

1.[(a)] Was designated as a public road pursuant to the laws of the jurisdiction where/in which it is located;

2.[(b)] Is maintained with public funds~~[,]~~ and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3.[(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 by/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 could/may cause any disturbance of the land surface or could/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.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(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 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.

(15) "Operations" is defined by[is] KRS 350.010.

(16) "Operator" is defined by[is] 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 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.

(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 pursuant to[under] 405 KAR Chapter 10 and that includes[which shall include] the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to[under] the permit, including all disturbed areas, provided that Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could[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 by[is] KRS 350.010.

(23) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" includes[shall include] any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that could[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 could[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 by[is] KRS 350.010.

(25) "Secretary" is defined by[is] 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 that[which]:

1. Is causing environmental harm; or

2. Could[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 by[is] KRS 350.010.

(28) "Surface coal mining operations" is defined by[is] 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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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. Chapter 25, 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 and zero-tenths (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 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 could[may] be adversely impacted by surface coal mining and reclamation operations.

(5) "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:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) 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 established[provided] in this definition;

(e) 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, or shipping areas;

(f) 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;

(g) and The area located above underground workings associated with underground mining activities;

(h) and auger mining or in situ mining; and

(i) 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:

1. (a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

2. (b) Is maintained with public funds or and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3. (c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person[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 405 KAR Chapters 7 through 24[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 by[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 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 and/or secondary recovery systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques that[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 if[where] practicable. The term includes equipment, devices, systems, methods, or techniques that[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 determines[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 by[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 pursuant to/under the requirements of 405 KAR Chapters 7 through 24 if the activity could[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 that[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 that[which] 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 could[may] interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining

includes/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 that[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 that[which] has a channel bottom that is always above the local water table.

(35) "Excess spoil":

(a) Means spoil disposed of in a location other than the coal extraction area; and

(b) Does not mean, 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 that[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; or

(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; or, if

(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 could[may] be identified in combination if[when] joint or seasonal uses occur and could[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 that[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 [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 by[is] KRS 350.010.
- (66) "Operator" is defined by[is] 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 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.
- (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 by[is] 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":
 - (a) 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; and
 - (b) Does not mean[. 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 that[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 pursuant to[under] 405 KAR Chapter 10 and that[which] shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to[under] the permit, including all disturbed areas[.]; provided that[that] Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could[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 required[imposed] by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.
- (79) "Person" is defined by[is] 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 that[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 in this administrative regulation[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 includes[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 **by/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 **that/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":

(a) 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; **and**

(b). ~~The term~~ Does not **mean/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 **could/may** include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That **does/shall** not include secondary sedimentation control structures, **such as/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 areas **[disturbances]** associated with auger and in situ mining.

(100) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources **including/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 **that/which**:

1. Is causing environmental harm; or
2. **Could/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 (**such as/a-g-** 1v:5h). It **can/may** also be expressed as a percent or in degrees.

(102)(104) "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, **30 U.S.C. Chapter 25** ~~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; **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.

(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 **by/in** KRS 350.010.

(111)(110) "Surface coal mining operations" is defined **by/in** KRS 350.010.

(112)(104) "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 **that/which** are

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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)[(143)] "Temporary diversion" means a diversion of a stream or overland flow that[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)[(144)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(116)[(145)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(117)[(146)] "Toxic-forming materials" means earth materials or wastes that[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 that[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: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

405 KAR 16:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465, 405 C.F.R. Parts 122, 124, 434

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 ~~establishes[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 ~~shall[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

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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 that[which] is used for domestic, agricultural, industrial, or other beneficial purpose; and

(e) The mining operation shall comply with[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 that shall[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, if[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 established in[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; and[.]

(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 shall[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 comply with[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 pursuant to[under] this administrative regulation, that:

1. 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;

2. Water quantity and quality are suitable to support the postmining land uses; and

3. The water rights of other users have been protected or replaced.

(b) 1.[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.

2. 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 does not serve[is not one which serves] as an aquifer that[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.

1. 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.

2. 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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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. Chapter 25, 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 establishes definitions for[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 and zero-tenths (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 could[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:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) 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 established[provided] in this definition;

(e) 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, or shipping areas;

(f) 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;

(g)[and] The area located above underground workings associated with underground mining activities;

(h)[;] Auger mining[;] or in situ mining; and

(i)[. 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:

1.[(a)] Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

2.[(b)] Is maintained with public funds[;] and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3.[(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[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 by[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 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.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques that[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 that[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 by[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 pursuant to[under] the requirements of 405 KAR Chapters 7 through 24 if the activity could[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 that[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 that[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 could[may] interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining includes[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 that[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 that[which] has a channel bottom that is always above the local water table.

(38) "Excess spoil":

(a) Means spoil disposed of in a location other than the coal extraction area; and

(b) Does not mean, 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 that[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 remaining 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; and

(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; or;

(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 could[may] be identified in combination when joint or seasonal uses occur and could[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":

(a) 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; and

(b) Does not mean: any building used only for commercial agricultural, industrial, retail, or other commercial enterprises is excluded.

(68) "Occupied residential dwelling and structures related thereto":

(a) Means, for purposes of 405 KAR 8:040, Section 26 and 405 KAR 18:210;

1. Any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation; and

2. 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; and

(b) Does not mean: any structure used only for commercial agricultural, industrial, retail, or other commercial purposes [is excluded].

(69) "Operations" is defined by/in KRS 350.010.

(70) "Operator" is defined by/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 by/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":

(a) 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; and

(b) Does not mean: ~~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 that/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 pursuant to/under 405 KAR Chapter 10 and that/which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to/under the permit, including all disturbed areas; provided that Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could[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 required/imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(82) "Person" is defined by/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 that/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 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.

(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 if[when] rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area includes[shall include] all spoil of this nature located in the immediate vicinity of the mining operation.

(91) "Reclamation" is defined by[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 that[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":

(a) 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; and

(b)[. The term] Does not mean[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 could[may] include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That does[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 ponds.

(101) "Shadow area" means the surface area overlying underground mine works and surface areas [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 could[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, 30 U.S.C. Chapter 25[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; 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.

(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; 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.

(111)[(410)] "Surface coal mining and reclamation operations" is defined by[in] KRS 350.010.

(112)[(411)] "Surface coal mining operations" is defined by[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 that[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).

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(115)[(144)] "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 that[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.

(128)[(127)] "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.

(129)[(128)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(130)[(129)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks that[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.

(131)[(130)] "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: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)**

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 shall be[are] applicable to all underground mining activities including coal processing plants, conducted pursuant to[under] 405 KAR Chapters 7 through 24. The requirements of 405 KAR Chapter 18 shall[provisions of this chapter] also apply to those special categories of underground mining activities for which performance standards are established in[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 405 KAR Chapter 18[this chapter].

Section 2. Coal Recovery. Underground mining activities shall

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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 shall be/is minimized.

Section 3. Slides. At any time a slide occurs that[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 pursuant to 405 KAR Chapters 7 through 24.

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, KAR Title[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 that[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 complies with/meets all other applicable requirements of 405 KAR Chapters 7 through 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 pursuant to/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 shall/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 in accordance with paragraph (b) of this subsection.

(b) 1. 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.

2. 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 shall/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.

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.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(As Amended at ARRS, November 13, 2017)

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 establishes/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. (1) 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.

(2) 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 in accordance with 405 KAR Chapters 7 through 24.

(3) [;] Use of a drilled hole or monitoring well as a water well shall comply with/must meet the provisions of 405 KAR 18:060, Section 6.

(4) This section shall/does not apply to holes drilled and used for blasting, in the area affected by surface operations.

Section 2. Temporary. (1) Each mine entry that[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, or/and other exposed underground opening that[which] 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. (1) If/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 pursuant to/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.

(2) 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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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. including-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 ~~both~~ the permit area, shadow area, and adjacent areas, in order to:

(a) Prevent material damage to the hydrologic balance outside the permit area; and

(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 shall not be/is not adversely affected.

(3) In no case shall federal or/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 shall 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 shall include practices carried out within and adjacent to the disturbed area.

(a) 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.

(b) Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination.

(c) Sediment control methods shall include:

1.-(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);

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;

3.[(c)] Retaining sediment within disturbed areas;

4.[(d)] Diverting run-off away from disturbed areas;

5.[(e)] Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;

6.[(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;

7.[(g)] Treating with chemicals;

8.[(h)] Treating mine drainage in underground sumps; and

9.[(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 that[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.

(a) 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.

(b) Storage shall be limited to the period until burial or treatment first becomes feasible.

(c) 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) Shall[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 pursuant to 405 KAR Chapter 18[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 established[outlined] in the plan approved pursuant to[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.

(1) With the prior approval of the cabinet in accordance with 405 KAR 16:040, Section 1 and 405 KAR 18:040, Section 1[regulatory authority], wells may be transferred to another party for further use.

(2) At a minimum, the conditions of a[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 405 KAR Chapter 18[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 shall be[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 that shall comply with[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 based on site conditions; and

(d) Comply[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) If water from one (1) underground mine is[may be] diverted into other underground workings, it shall be 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 comply with criteria established[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 not 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 in accordance with 401 KAR Chapters 5 and 10, 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 established[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 pursuant to[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 pursuant to[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 that complies with 401 KAR Chapter 8;

(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 that[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 that[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 pursuant to[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 the permittee's[his] liability insurance policy pursuant to[under] 405 KAR 10:030, Section 4 covers the replacement, the additional bond amount required pursuant to[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 established pursuant to[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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 13A,] 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 ~~establishes~~~~[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 in accordance with 405 KAR Chapters 7 through 24 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 ~~if[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); and

(d) The mining operation complies with[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 that shall[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, if[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 established pursuant to[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; and[.]

(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 shall[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 pursuant to[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 shall be[are] suitable to support the postmining land uses.

(b) 1.[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.

2. 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 that[which] serves as an aquifer that[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 pursuant to[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.

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.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 ~~establishes[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 ~~these[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 ~~that shall prevent[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 ~~that[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 ~~that[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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 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 ~~pursuant to[under]~~ the permanent regulatory program. This administrative regulation ~~establishes definitions for[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 ~~and zero-tenths~~ (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) "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 ~~could[may]~~ be adversely impacted by surface coal mining and reclamation operations.

(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:

- ~~(a)~~ The disturbed area;
- ~~(b)~~ Any area upon which surface coal mining and reclamation operations are conducted;
- ~~(c)~~ Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;
- ~~(d)~~ 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 ~~established[provided]~~ in this definition;
- ~~(e)~~ 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, ~~or~~ shipping areas;
- ~~(f)~~ 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;
- ~~(g)[and]~~ The area located above underground workings associated with underground mining activities;
- ~~(h)[,]~~ Auger mining~~[,]~~ or in situ mining; ~~and~~
- ~~(i)[. 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:

~~1.[(a)]~~ Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

~~2.[(b)]~~ Is maintained with public funds~~[,]~~ and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

~~3.[(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 ~~activities such as[, 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~~[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 by~~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 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 and~~[;]~~ 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 by~~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 pursuant to~~under~~ the requirements of 405 KAR Chapters 7 through 24 if the activity could~~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 that~~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 that~~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 that~~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 that~~which~~ has a channel bottom that is always above the local water table.

(29) "Excess spoil":

(a) Means spoil disposed of in a location other than the coal extraction area; and

(b) ~~Does not, 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 are~~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", including~~[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; or;

(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 could~~may~~ be identified in combination when joint or seasonal uses occur and could~~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 by~~in~~ KRS 350.010.

(45) "Operator" is defined by~~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 by~~in~~ KRS 350.010.

(49) "Perennial stream":

(a) 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; and

(b) Does not mean~~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 pursuant to~~under~~ 405 KAR Chapter 10 and that includes~~which shall include~~ the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to~~under~~ the permit, including all disturbed areas; provided that Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could~~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 by~~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 ~~that~~~~which~~ have been "historically used for cropland" as that phrase is defined in this section~~above~~.

(57) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(58) "RAM" means Reclamation Advisory Memorandum.

(59) "Reclamation" is defined by~~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":

(a) 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; and

(b)~~The term~~ Does not mean~~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":

(a) Means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and that can include~~including but not limited to~~ a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out; and

(b) Does not mean~~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 areas~~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 is also~~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;~~if~~

(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~~**[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 ~~by~~**[in]** KRS 350.010.

~~(76)~~**[(75)]** "Surface coal mining operations" is defined ~~by~~**[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 ~~that~~**[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~~**[2000]** 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 ~~that~~**[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: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)**

405 KAR 20:080. In situ processing.

RELATES TO: KRS 350.010, 350.151, 350.465, Chapter 353

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350~~[in pertinent part]~~ requires the cabinet to promulgate administrative regulations that establish environmental protection performance standards for all surface coal mining and reclamation operations. This administrative regulation establishes~~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 through a permitting action;

(b) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the cabinet in accordance with KRS Chapter 353 and 805 KAR Chapter 1;

(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 pursuant to~~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 shall be~~are~~ promptly treated, confined, or disposed of, in a manner that shall prevent~~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 shall~~is~~ not be diminished.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, November 13, 2017)

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 administrative regulations to establish environmental protection performance standards for all surface coal mining and reclamation operations. This administrative regulation establishes[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 that[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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, November 13, 2017)

805 KAR 1:060. Plugging wells[; noncoal-bearing strata].

RELATES TO: KRS 211.892, 211.893, 353.120, 353.170, 353.180(1), 353.550, 353.990

STATUTORY AUTHORITY: KRS[43A.100,] 353.560(1), 353.739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.560(1) requires the department to promulgate administrative regulations to regulate the plugging of all wells. This administrative regulation establishes[identifies] the minimum acceptable requirements to plug or temporarily abandon wells[drilled through noncoal-bearing strata].

Section 1. Definitions. (1) "Abandoned" is defined by KRS 353.510(12).

(2) "Cement" is defined by KRS 353.010(4).

(3) "Pool" is defined by KRS 353.510(9).

(4) "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

(5) "Unit" is defined by KRS 353.010(18).

(6) "Well" is defined by KRS 353.510(14).

Section 2. Temporary Abandonment Permit. (1) An owner or operator shall not leave a well drilled for oil, gas, salt water disposal, or any other purpose in connection with the production of oil and gas unplugged after the well is no longer used for the purpose it was drilled or converted.

(2) An owner or operator who wants to temporarily abandon a well shall apply for a permit from the division on the Temporary Abandonment Permit form ED-12.

(3)(a) Nothing herein shall prevent the division, upon application and for good cause shown, from issuing a temporary abandonment permit, for a period not to exceed two (2) years. Nothing shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water, or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The temporary abandonment permit may be renewed on or before the expiration[at the end] of the two (2) year period. To renew, the permittee shall reapply[by reapplication] on the Temporary Abandonment Permit form ED-12.

(b) All wells on which a temporary abandonment permit has been issued shall be cased and capped prior to temporary abandonment in a manner [so—as] to protect all potential oil, gas, and fresh water zones.

(4) Each oil and gas well drilled through coal bearing strata shall be cased and vented [in—a manner] to prevent the accumulation of gas in the bore hole.

(5) Pursuant to KRS 353.739, the division shall order a well drilled through a workable coal bed to be plugged and abandoned if:

(a) The well's permit conditions cannot be satisfied by remediation; or

(b) The operator is not able to comply with[meet] the ordered remediation.

(6) If a well is ordered plugged and abandoned pursuant to KRS 353.739, then a temporary abandonment permit shall not be granted.

Section 3. Notice for Plugging an Oil or Gas Well. (1)(a) Before work is commenced to plug and abandon a well, the owner or operator shall give notice to the division of the[their] intention to abandon the well.

(b) A representative of the division shall provide plugging and abandonment direction and may be present at the time of plugging the well.

(2) The notice for plugging wells shall include at a minimum:

(a) The permit number of the well;

(b) The location of the well; and

(c) A fixed time when the work of plugging and filling will be commenced. The time shall not to be less than five (5) days after the day on which the notice is received by the division.

(3)(a) In addition to the requirements of subsection (2) of this section, an operator of a well drilled through a workable coal bed shall notify, by certified mail, the owners of record, lessee of record, and operators of the coal bed and the proper oil and gas inspector of the intention to plug and abandon the well.

(b) A representative of the coal operator or owner may be present at the plugging and filling of the well.

Section 4. Plugging an Oil and Gas Well in Non-coal Bearing Strata. A well drilled through non-coal bearing strata shall be plugged as established in subsections (1) through (6) of this section.

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation if[whenever] possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3)(a) A surface cement plug not less than fifteen (15) feet in length shall be placed at the top of the well and cemented to surface.

(b) The casing shall be cut off three (3) feet below surface so[~~in a manner~~] as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with [approved] heavy mud, approved pursuant to 805 KAR 1:020. Section 2(1)(c), up to the base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and casing cannot be pulled may be plugged as established in paragraphs (a) and (b) of this subsection.[follows:]

(a) The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill.[- and]

(b) A surface plug shall be placed as established in subsection (3) of this section. An intermediate plug shall not be required.

(6) The operator shall have the option as to the method of placing cement in the hole by:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) Other method approved by the director to accommodate unforeseen well conditions.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form ED-38.

Section 5. Plugging an Oil and Gas Well in Coal-bearing Strata. Each well[Wells] drilled through a workable coal bed, including for the extraction of coal bed methane, shall be plugged and abandoned as established in subsections (1) through (7) of this section. (1) A cement plug shall be placed to a point forty (40) feet below the lowest workable coal bed.

(a) The hole shall be filled with cement from the bottom to a point twenty (20) feet above the top of the lowest oil, gas, or water-bearing strata; or

(b) A permanent bridge shall be anchored thirty (30) feet below its lowest oil, gas, or water-bearing strata, and from the bridge it shall be filled with cement to a point twenty (20) feet above the strata.

(2) Following compliance with the requirements of subsection (1)(a) or (b) of this section a cement plug shall be used to completely seal the hole.

(3)(a) Between the sealing plug referenced in subsection (2) and a point twenty (20) feet above the next higher oil, gas, or water-bearing strata, the hole shall be plugged in accordance with subsections (1) and (2) of this section.

(b) Another cement plug shall be installed above this oil, gas,

or water-bearing strata in accordance with subsection (2) of this section.

(4) In accordance with subsection (1) through (3) of this section, the hole shall be filled and plugged or bridged, filled, and plugged, in each of its oil, gas, or water-bearing strata. If these strata are not widely separated and are free from water, the strata may be grouped and treated as a single productive stratum.

(5) After plugging all strata, a final surface plug shall be anchored approximately ten (10) feet below the bottom of the largest casing in the well and from that point to the surface, the well shall be filled with cement.

(6) The operator shall place cement in the hole in one of the following ways:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) A method approved by the director to accommodate unforeseen well conditions.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form ED-38.

(8) If any of the strata in the well have been completed or stimulated, creating cavities that cannot readily be filled in the manner established in subsections (1) through (7) of this section, the well operator shall follow either of the [following] methods established in paragraphs (a) or (b) of this subsection.[-:]

(a) If the stratum that has been completed or stimulated is the lowest one in the well, there shall be placed, at the nearest suitable point but not less than twenty (20) feet above the stratum, a plug of cement or other suitable material that shall completely seal the hole; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, plugging in the manner established shall be done at the nearest suitable point, but not less than twenty (20) feet below and above the stratum completed or stimulated.[-: or]

(b) If the cavity is in the lowest oil or gas-bearing stratum in the well, a liner shall be placed that shall extend from below the stratum to a suitable point, but not less than twenty (20) feet above the stratum in which the completion or stimulation has been done; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, the liner shall be so placed so that it shall extend not less than twenty (20) feet above or less than twenty (20) feet below the stratum in which completion or stimulation has been done. After the liner is placed, it shall be compactly filled with cement, clay, or other nonporous sealing material.

(9)(a) Once a well drilled through coal-bearing strata has been filled and securely plugged to a point forty (40) feet below the lowest workable coal bed, and in the judgment of the well operator, the coal operator, and the division, a permanent outlet to the surface is required, the outlet shall be provided as established in subparagraphs 1. through 3. of this paragraph.

1.[in the following manner:] A plug of cement shall be placed in the well at a depth, not less than ten (10) feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe, not less than two (2) inches in diameter, which shall extend to the surface.

2. At or above the surface, the pipe shall be provided with a device that shall permit the free passage of gas and prevent obstruction.

3. After the plug and pipe are set, the hole shall be filled with cement to a point ten (10) feet above the lowest workable coal bed.

(b)1. If there are additional overlying workable coal beds, they shall be treated similarly, if this treatment is necessary in the reasonable judgment of the well operator, the coal operator, and the division.

2. If the parties cannot agree, the decision of the division shall control.

Section 6. Oil and Gas Wells used as Fresh Water Wells. (1) If a well drilled through non-coal-bearing strata is to be plugged and can safely be used as a fresh water well, and if the utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water.[-: ff] A written authority

for the use shall be/is secured from the landowner and filed with the division.

(2)(a) If the well to be plugged is drilled through coal-bearing strata and can safely be used for a fresh water well, and the utilization is desired by the landowner and is agreeable to the owner or operator of all coal-bearing strata beneath the location of the well, the well shall not be filled above the required sealing plug set below fresh water. After written authority for the use shall be/is secured from the landowner, and coal owner or operator, and filed with the division.

(b) In order for the operator to be released of any further plugging responsibility, the operator shall provide to the division evidence of compliance with the domestic water well construction requirements pursuant to 401 KAR 6:310 as administered by the Department for Environmental Protection.

Section 7. Downhole Disposal of TENORM Contaminated Material. (1) On-site downhole disposal of tubular goods, sludge, and scale containing TENORM shall be allowed by the Division of Oil and Gas in combination with plugging and abandonment of an oil or gas production well if an inspector from the Division of Oil and Gas is present for the duration of the disposal and plugging activity and the following standards established in paragraphs (a) through (g) of this subsection are met.;

(a) The operator shall certify that the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed has consented, by lease or other document, to allow the on-site disposal of TENORM waste.;

(b) The TENORM waste shall be limited to that generated at the lease, pool, or unit where disposal is proposed.;

(c) The TENORM waste shall be placed in the well at a depth of at least 200 feet below the base of the deepest encountered underground source of drinking water with a total dissolved solids concentration of 10,000 ppm or less.;

(d) The TENORM waste shall be placed in the well in a manner approved by the division to ensure proper placement and containment.;

(e) A cement plug shall be placed below the TENORM waste, isolating the waste from any producing formation and preventing migration of TENORM waste below the disposal interval. The well shall be cemented from above the TENORM waste to the top of the well.;

(f) The cement of the surface plug shall be color dyed with red iron oxide.; and

(g) A permanent marker that shows the three (3) bladed radiation symbol shall be placed at the top of the surface cement plug or welded to a steel plate at the top of the well casing at ground level.

(2) The operator shall apply to dispose of TENORM downhole, on Application for Authorization for Down-hole Disposal of TENORM Materials Material in Well Plugging and Abandonment Operations, form ED-39, which shall, at a minimum, contain the following information:

(a) A description of the type of TENORM waste disposed;

(b) The approximate volume of each type of waste disposed;

(c) Results of activity concentration analysis of combined Ra-226 and Ra-228 in picocuries per gram (pCi/g) or radiation exposure or dose rate measured through the use of portable radiation detector appropriate for the radiation being measured, calibrated at least annually, and reported in microrentgen per hour (µR/hr) or microrem per hour (µrem/hr);

(d) The name, permit number, and GPS location of the well to be plugged in which TENORM waste is proposed to be disposed; and

(e) The formation or formations from which the TENORM waste originated.

(3) A copy of the Application for Authorization for Down-hole Disposal of TENORM Materials Material in Well Plugging and Abandonment Operations, form ED-39 shall be provided to the Cabinet for Health and Family Services, Radiation Control Branch, the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed, and to the owner of the surface estate at the time of filing of the application with the division.

(4) The division shall review the Application for Authorization for Down-hole Disposal of TENORM Materials Material in Well Plugging and Abandonment Operations, form ED-39 for completeness and for compliance with the information in subsection (2) of this section in order to prevent migration of TENORM contaminated wastes from the borehole.

(5) The division shall provide written notice to the applicant of its approval or denial of the application. If the application is denied, the division shall notify the applicant in writing of the additional information necessary to satisfy the requirements of this section.

Section 8. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner established provided in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated and drilled by other persons.

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

(a) "Affidavit to Time and Manner of Plugging and Filling Well", Form ED-38, July 2017.

(b) "Temporary Abandonment Permit", Form ED-12, July 2017; and

(c) "Application for Authorization for Down-Hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations", Form ED-39, September July 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Unless written permission shall be obtained from the department, no operator or owner shall permit any well drilled for oil, gas, salt water disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. However, nothing herein shall prevent the department, upon application and for good cause shown, from issuing a temporary permit, for a period not exceeding two (2) years, to an operator to leave a well unplugged, and nothing herein shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The permission for temporary abandonment may be renewed at the end of the two (2) year period by reapplication. All wells on which a temporary abandonment permit has been issued shall be cased and capped in such a manner so as to protect all potential oil and/or gas zones and fresh water.

Section 2. Before any work is commenced to plug and abandon any well the owner or operator thereof shall give notice to the department of his intention to abandon such well. Notice shall be given in the manner specified by the department. A duly authorized representative of the department may be present at the time and place specified to supervise the plugging of such well.

Section 3. Wells not drilled through coal-bearing strata may be plugged as follows:

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation whenever possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3) A plug shall be placed at the surface of the ground in each hole plugged in such a manner as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with approved heavy mud up to the base of the surface string at which point a plug of not less than fifteen (15) feet of

cement shall be placed. The hole shall also be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and no casing can be pulled may be plugged as follows: The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill. A surface plug shall be placed as provided in subsection (3) of this section. No intermediate plugs will be required.

(6) The operator shall have the option as to the method of placing cement in the hole by:

- (a) Dumb bailer;
- (b) Pumping through tubing;
- (c) Pump and plug; or
- (d) Other method approved by the director.

Section 4. Within thirty (30) days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging report with the department setting forth in detail the method used in plugging the well. Such report shall be made on a form provided by the department.

Section 5. When the well to be plugged may safely be used as a fresh water well, and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; provided, that written authority for such use is secured from the landowner and filed with the department.

Section 6. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner provided in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated, and drilled by other persons.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing, Boiler Section
(As Amended at ARRS, November 13, 2017)

815 KAR 15:010. Definitions for 815 KAR Chapter 15.

RELATES TO: KRS Chapter 236

STATUTORY AUTHORITY: KRS 236.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030 requires[authorizes] the commissioner[, through the Board of Boiler and Pressure Vessel Rules,] to promulgate administrative regulations that establish[to fix] reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and pressure piping. This administrative regulation establishes the definitions for terms used in 815 KAR Chapter 15[the boiler and pressure vessel safety rules].

Section 1. Definitions. (1) ["Act" means the Kentucky Boiler and Pressure Vessel Safety Act, KRS Chapter 236.

(2) "ANSI" means the American National Standards Institute.

(3) "ASME" is defined by KRS 236.010(5).

(2) [(4)] "ASME Boiler and Pressure Vessel Code" or "ASME Code" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Codes as follows, including all cited code cases, appendices, and addenda, which are incorporated by reference in [ef] 815 KAR 15:025 and 815 KAR 15:026:

(a) Section I, rules for construction of power boilers;

(b) Section II, material specifications:

1. Part A specifications for ferrous materials;

2. Part B specifications for nonferrous materials;

3. Part C specifications for welding rods, electrodes, and filler metals; and

4. Part D Properties (Customary);

(c) [Section III, Nuclear Vessel Code;

(d)] Section IV, Rules for construction of heating boilers;

(d) [(e)] Section V, nondestructive examination;

(e) [(f)] Section VIII, rules for construction of pressure vessels, Division 1, Division 2, and Division 3;

(f) [(g)] Section IX, welding and brazing qualifications; and

(g) [(h)] Section X, Fiber-Reinforced Plastic Pressure Vessels.

(3) [(5)] "Authorized inspector" means an inspector holding the appropriate endorsement on the National Board Commission to perform new construction shop inspections.

(4) [(6)] "Board" is defined by KRS 236.010(6).

(7) "Boiler" is defined by KRS 236.010(1).

(5) "Boiler and pressure vessel contractor" means the holder of a boiler and pressure vessel contractor license as issued by the department pursuant to KRS 236 and 815 Chapter 8.

(6) [(8)] "Boiler Inspection Section" means the section within the Division of Plumbing, Department of Housing, Buildings and Construction.

(7) [(9)] "Boiler inspector" is defined by KRS 236.010(14).

(8) [(10)] "Certificate inspection" is defined by KRS 236.010(7).

(9) [(14)] "Chief boiler inspector" is defined by KRS 236.010(13).

(10) [(12)] "Code boiler or pressure vessel[or standard boiler or pressure vessel]" means a boiler or pressure vessel that[which] bears the ASME Code Symbol stamp and designator[, and the National Board stamp]. (See also "state special" [.-])

(11) [(13)] "Commission" means the written credential issued by the department to a boiler inspector, special boiler inspector, or owner-user inspector pursuant to[under the provisions of] KRS 236.070, 236.080, or 236.095.

(12) [(14)] "Commissioner" is defined by KRS 236.010(3).

(13) "Deaerator tank" means a pressure vessel in which water is heated, usually by steam, so that any dissolved oxygen is removed from the water [(15)] "Condemned boiler or pressure vessel" means a boiler or pressure vessel that has been inspected and declared unsafe or disqualified by legal requirements by a commissioned inspector who has applied a stamping or marking designating its rejection].

(14) [(16)] "Department" is defined by KRS 236.010(4).

(15) [(17)] "Electric boiler" means a power boiler, heating boiler, high or low-temperature water boiler in which the source of heat is electricity.

(18) [(18)] "Existing installations" means any boilers and associated piping systems completed and approved for operation prior to July 1, 1970, or pressure vessels and associated piping systems completed and approved for operation prior to July 15, 1980.

(16) [(19)] "Expansion tank" means a pressure vessel, unfired but directly connected to a hot water heating boiler, to absorb or cushion expansion therein and subject to comparable pressure with the boiler itself.

(20) [(20)] "External inspection" means an inspection made while[when] a boiler or pressure vessel is in operation and under pressure.

(17) [(24)] "Fired Jacketed steam kettle" means a vessel in which steam pressure is generated and shall be classified as a boiler.

(22) "Heat recovery boiler" means a boiler in which the source of heat is from another process[process steam generator] as defined by this administrative regulation].

(18) [(23)] "Heating boiler" is defined by KRS 236.010(1)(c).

(19) [(24)] "High pressure, high temperature water boiler" is defined by KRS 236.010(1)(b).

(20) [(25)] "Hot water heating boiler" means a nonsteam generating boiler from which hot water is circulated for heating purposes and returned to the boiler[, and that[which] operates at a pressure not exceeding 160 psig or a temperature of 250 degrees Fahrenheit at or near the boiler outlet.

(21) [(26)] "Hot water storage tank" means a pressure vessel,

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

unfired but~~directly~~ connected to and subject to the same pressures as a companion hot water supply boiler, the combination being used to heat and store hot water for use externally to itself.

~~(22)~~~~(27)~~ "Hot water supply boiler" means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 210 degrees Fahrenheit at or near the boiler outlet.

~~(23)~~~~(28)~~ "Hydrostatic test" means the activity of filling a boiler, pressure vessel, or~~and~~ associated piping with water and raising the pressure within the system to check for tightness or mechanical integrity~~safety~~.

~~(24)~~~~(29)~~ "Internal inspection" means an inspection made under circumstances that the boiler or pressure vessel is not operating~~;~~ and hand holes or manways are open for inspection of internal portions of the boiler or pressure vessel as construction permits.

~~(25)~~ "Jacketed kettle" means a pressure vessel with inner and outer walls that is subject to water or steam pressure and is used to boil or heat liquids and to cook food.

~~(26)~~~~(30)~~ "Lined potable water boiler~~heater~~" means a water boiler~~heater~~ with a corrosion resistant lining used to supply potable hot water.

~~(27)~~ "MAWP" is defined by KRS 236.010(23).

~~(28)~~~~(31)~~ "Miniature boiler" means a power boiler or high temperature water boiler not exceeding any of the following:

(a) Sixteen (16) inches inside diameter of shell (not applicable to electric boilers);

(b) Twenty (20) square feet heating surface;

(c) Five (5) cubic feet gross exclusive of casing and insulation; or

(d) 100 pounds PSI maximum allowable working pressure.

~~(32)~~ "National Board (NB)" means the National Board of Boiler and Pressure Vessel Inspectors~~;~~—1055 Crupper Avenue, Columbus, Ohio, 43229, which group has also issued a National Board Inspection Code].

~~(29)~~~~(33)~~ "Noncode boiler or pressure vessel [~~or nonstandard boiler or pressure vessel~~]" means a boiler or pressure vessel that does not bear the ASME code symbol stamp and designator~~or the National Board stamp~~. (See also "state special."~~;~~)

~~(30)~~~~(34)~~ "Nuclear energy system" means that portion of a power plant that serves the purpose of producing and controlling output of thermal energy from nuclear fuel.

~~(35)~~ "Nuclear power plant" means a nuclear power plant consisting of one (1) or more nuclear power systems and containment systems.

~~(36)~~ "Nuclear power systems" means a system which serves the purpose of producing and controlling an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping system, pumps, valves, and storage tanks.

~~(37)~~ "Nuclear vessel" means a pressure vessel designed and constructed in accordance with Section III of ASME Boiler and Pressure Vessel Code.

~~(38)~~ "Owner-user inspector" means an inspector commissioned by the department and employed by a company operating a pressure vessel within the Commonwealth and meeting the requirements established~~set forth~~ in KRS 236.095(1).

~~(31)~~~~(39)~~ **"Owner or user" means any person, firm, or corporation owning or operating a boiler or pressure vessel within this Commonwealth.**

~~(32)~~ "Owner's piping inspector" is defined by KRS 236.010(25).

~~**[(32)](40) "Owner or user" means any person, firm, or corporation owning or operating a boiler or pressure vessel within this Commonwealth.]**~~

~~(33)~~~~(41)~~ "Power boiler" is defined by KRS 236.010(1)(a).

~~(34)~~~~(42)~~ "Pressure piping" means the~~boiler and pressure vessel external and~~ connecting piping emanating from the associated boiler or pressure vessel and includes ~~code~~ piping as covered pursuant to~~under~~ the ASME Boiler and Pressure Vessel Code, Sections I and IV; Pressure Vessel Code, Section VIII, Division I, 2, or 3. These piping codes include:

(a) Power Piping Code ASME B31.1;

(b) Process Piping Code ASME B31.3;

(c) Refrigeration Piping and Heat Transfer Components Code ASME B31.5;

(d) Building Services Piping Code ASME B31.9; and

(e) Hydrogen Piping and Pipelines Code ASME B31.12.

~~(35)~~~~(43)~~ "Pressure vessel" is defined by KRS 236.010(2).

~~(36)~~~~(44)~~ "Pressure vessels for human occupancy" or "PVHO" means all pressure vessels that enclose a human within its pressure boundary while under internal or external pressure exceeding a differential pressure of 2 psi. PVHOs include decompression or recompression chambers, high altitude chambers, hypobaric or hyperbaric chambers, hyperbaric stretchers, medical hyperbaric oxygenation facilities, and personnel transfer capsules.

~~(37)~~~~(45)~~ "Process steam generator" means a vessel or system of vessels comprised of one (1) or more drums and one (1) or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

~~(46)~~ "PSI (psi)" means pounds per square inch.

~~(38)~~~~(47)~~ "PSIG (psig)" means pounds per square inch gauge.

~~(39)~~~~(48)~~ "Reinstalled boiler or pressure vessel" means a boiler or pressure vessel removed from its original setting and re-erected at the same location or erected at a new location without change of ownership.

~~(40)~~~~(49)~~ "Repair" means the work necessary to restore pressure-retaining items to a safe and satisfactory operating condition to comply with the National Board Inspection Code incorporated by reference in 815 KAR 15:026.

~~(41)~~~~(50)~~ "Secondhand boiler or pressure vessel" means a boiler or pressure vessel in which both the location and ownership have been changed after initial use.

~~(42)~~~~(51)~~ "Special boiler inspector" is defined by KRS 236.010(15).

~~(43)~~~~(52)~~ "State special" means a boiler or pressure vessel ~~that~~~~which~~ carries neither the ASME Boiler and Pressure Vessel Code symbol nor National Board registration~~stamping~~ but has been accepted by the department~~of Housing, Buildings and Construction~~ pursuant to 815 KAR 15:025, Section 4~~Section 5~~.

~~(44)~~~~(53)~~ "Unfired steam boiler" means a vessel or system of vessels intended for operation at a pressure in excess of fifteen (15) psig for the purpose of producing and controlling an output of thermal energy.

~~(54)~~ "V-R stamp holder" means the holder of a certificate issued by the National Board to repair pressure relief valves. ~~[(55)~~ "Water heater" means a closed vessel in which water is heated by the combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressures not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit.

~~(56)~~ "Waste heat boiler" means "unfired steam boiler" as defined by this administrative regulation.]

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: September 14, 2017

FILED WITH LRC: September 14, 2017 at 4 p.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing, Boiler Section
(As Amended at ARRS, November 13, 2017)**

815 KAR 15:025. New installations, general design, construction, and inspection criteria for boilers, pressure vessels, and pressure piping.

RELATES TO: KRS Chapter 236

STATUTORY AUTHORITY: KRS 236.030, 236.040, 236.060, 236.110, 236.120, 236.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030 ~~requires[authorizes]~~ and 236.420 ~~authorize~~ the commissioner[, through the Board of Boiler and Pressure Vessel Rules,] to promulgate administrative regulations that establish[to fix reasonable fees and] standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping. KRS 236.040 requires all boiler and pressure vessels to conform to the rules and regulations formulated by the commissioner and establishes the standards for pressure piping and pressure vessels for human occupancy. KRS 236.110 establishes the inspection requirements for boilers, pressure vessels, and pressure piping. This administrative regulation establishes the design, construction, and inspection[riteria] requirements of the boiler inspection section for all boilers and pressure vessels not exempted by KRS 236.060.

Section 1. Minimum Standards. (1) Boilers and pressure vessels. All new boilers and new pressure vessels shall comply with applicable provisions of 815 KAR Chapter 15 and the ASME Boiler and Pressure Vessel Code, 2013 Edition or subsequent editions, as established by KRS 236.040(2), except new boilers and new pressure vessels approved as state specials pursuant to Section 4 of this administrative regulation. All pressure vessels for human occupancy shall comply with the ASME Safety Standard for Pressure Vessels for Human Occupancy, 2012 Edition or subsequent editions, as established by KRS 236.040(3).

(2) ASME stamps. New boilers and new pressure vessels shall be stamped with the applicable certification mark of the ASME Boiler and Pressure Vessel Code.

(3) Installation standard. Installation of all boilers and pressure vessels shall conform to the National Board Inspection Code Part 1, 2015 edition or subsequent editions.

(4) Pressure piping.

(a) All new pressure piping installations connected to the boiler or pressure vessel shall conform to the National Board Inspection Code Part 1, 2015 edition, and the applicable standards referenced in this subsection, as established by KRS 236.040(2):

1. ASME Code for Power Piping, B31.1, 2012 edition or subsequent editions;

2. ASME Code for Process Piping, B31.3, 2012 edition or subsequent editions;

3. ASME Code for Refrigeration Piping and Heat Transfer Components, B31.5, 2013 edition or subsequent editions;

4. ASME Code for Building Services Piping, B31.9, 2011 edition or subsequent editions; and

5. ASME Code for Hydrogen Piping and Pipelines, B31.12, 2014 edition or subsequent editions.

(b) The maximum allowable design temperature and pressure of the piping system and all of its component parts shall meet or exceed the operating control settings of the boiler or pressure vessel.

(c) If the maximum allowable design temperature or pressure of the boiler exceeds the maximum design limits of the piping system or any of its component parts, the pipe and its components shall not be used unless the following conditions are met:

1. The temperature and pressure controls on the boiler are permanently set to prevent operation in excess of the design limits of the piping system; and

2. Safety valve or valves shall be installed on the boiler, pressure vessel, or the piping system to protect the system from excess pressure or temperature.

(5) Welded piping joints. Welded joints in pressure piping shall be installed by qualified welders in accordance with the ASME Code, Section IX, as required by the standards referenced in subsection (4) of this section.

Section 2. Manufacturer's Data Report. (1) A manufacturer's data report on all boilers of steel construction and all pressure vessels constructed in accordance with the ASME Boiler and Pressure Vessel Code shall be filed with the National Board of Boiler and Pressure Vessel Inspectors unless the boiler or pressure vessel is exempted by KRS 236.060 or the pressure vessel has an ASME "UM" certification mark. A pressure vessel with an ASME "UM" certification mark may be registered with the

National Board of Boiler and Pressure Vessel Inspectors.

(2) The boilers and pressure vessels required to be filed with the National Board in subsection (1) of this section shall include the National Board registration number on the manufacturer's date plate.

Section 3. Installation Inspection or First Inspection and State Registration of New Boilers and Pressure Vessels. (1) Installation inspection. New installations of boilers, pressure vessels, and associated pressure piping shall be inspected by the department for compliance with applicable ASME Boiler and Pressure Vessel Code requirements, the National Board Inspection Code, and this administrative regulation.

(2) Notification of inspection.

(a) If an inspection is required by this administrative regulation, the owner or user shall prepare each boiler, pressure vessel, and pressure piping system for inspection pursuant to this administrative regulation and the National Board Inspection Code, Part I.

(b) The owner or user shall prepare for and apply a hydrostatic pressure or other leak test on the date if requested by the boiler inspector, special boiler inspector, or owner-user inspector.

(c) Inspections shall be conducted within seven (7) days of the date of notification.

(3) Inspection times. **Except as established in 815 KAR 15:027**, inspections made by boiler inspectors shall be conducted during normal business hours of the department between 8:00 a.m. and 4:30 p.m. Monday through Friday.

(4) Contractor availability. The boiler and pressure vessel contractor shall be available to the boiler inspector, physically or electronically, at the time of the inspections.

(5) State registration. Upon completion of the installation or at the time of first inspection, a Commonwealth of Kentucky registration number shall be assigned to the boiler or pressure vessel and shall be applied to the boiler or pressure vessel with a metal tag showing the registration number. This tag shall be securely affixed near the manufacturer's name plate or data plate.

(6) Non-registered boilers and non-registered pressure vessels. Boiler inspectors, special boiler inspectors, and owner-user inspectors shall notify the department within thirty (30) days of locating any non-registered boiler or non-registered pressure vessel.

(7) General welding.

(a) If welded assembly has been used, the installing boiler and pressure vessel contractor shall produce the following for the boiler inspector's, special boiler inspector's, or owner's piping inspector's review:

1. The welding procedures; and

2. Proof of qualification and continuity records for the welders and welding operators.

(b) The boiler and pressure vessel contractor shall be responsible for the quality of the welding.

(8) Welded piping joints. Welded joints in pressure piping shall be visually inspected for complete and full root penetration, soundness of the weld and freedom from undercutting, cracking, or other surface imperfections in accordance with the requirements of the applicable ASME B31 Code section. If the visual inspection reveals a potential defect, the boiler inspector, special boiler inspector, or owner's piping inspector may require other nondestructive tests, such as radiography, to be performed by the contractor to verify the soundness of the weld. All tests or retests required by the boiler inspector, special boiler inspector, or owner's piping inspector shall be at the owner's or boiler and pressure vessel contractor's expense.

(9) Hydrostatic pressure test for boilers and pressure vessels.

(a) A hydrostatic pressure test, when applied to a boiler or pressure vessel, shall conform to the testing procedures and pressures as specified in the original code of construction. The pressure shall be under proper control so that in no event shall the required test pressure exceed the testing requirements listed in the original code of construction.

(b) During the hydrostatic pressure test, the safety valve or valves shall be removed. If the safety valve or valves cannot be removed, then each valve disc shall be held down by means of a

testing clamp and not by screwing down the compression screw upon the spring.

(c) The minimum temperature of the water used to apply a hydrostatic test shall not be less than ambient temperature, but in no case less than seventy (70) degrees Fahrenheit, and the maximum temperature shall not exceed 120 degrees Fahrenheit.

(d) If the only purpose of the test is to determine tightness, the test pressure shall be equal to the relieving pressure of the safety valve having the lowest relief setting.

(10) Pressure test for pressure piping. Pressure piping systems installed in association with the boiler or pressure vessel shall be inspected for proper materials, adequate pressure, and temperature ranges for the boiler or pressure vessel operation and for adequate support and tightness as established in this subsection.

(a) Hydrostatic and pressure leak tests.

1. Except as stated in paragraph (b), hydrostatic or other leak tests shall be performed on the pressure piping system connected to the boiler or pressure vessel and shall conform to the procedures and test pressures outlined in the original code of construction.

2. Non-destructive testing shall be used if hydrostatic or leak testing cannot be performed.

3. Original mill material stencils and markings used to verify material shall be legible at the time of inspection. Pipe, including welding joints, shall not be painted or covered prior to inspection.

(b) Alternative testing.

1. The following piping systems shall be inspected visually under in-service conditions:

a. Compressed air systems with a MAWP of 200psi or less, a pipe diameter of two (2) inches or less, and no welded joints;

b. Hydronic heating or process systems with a MAWP of 100psi or less, a pipe diameter of two (2) inches or less, and no welded joints;

c. Steam condensate systems with a MAWP of 50psi or less, a pipe diameter of two (2) inches or less, and no welded joints;

d. Non-ammonia refrigeration with a pipe diameter of two (2) inches or less and no welded joints; and

e. Cryogenic piping with a pipe diameter of two (2) inches or less and no welded joints.

2. Sufficient openings shall be made in any insulation to determine pipe material. Welded piping joints shall not be covered with insulation prior to inspection.

3. Pipe may be painted prior to inspection if the owner or user provides documentation of materials that make up the pipe to the inspector. Welded joints shall not be painted prior to inspection.

(c) Code compliance. Pressure piping inspections shall include determining compliance with applicable ASME B31 Code including material specifications for the piping and component parts. The boiler and pressure vessel contractor shall provide documentation to the boiler inspector, special boiler inspector, owner's piping inspector, or owner-user inspector showing that:

1. The materials used and method of construction meets the manufacturer's procedures and specifications; and

2. The system is utilizing the materials and equipment specified within the temperature and pressure ranges set forth in the design and as required by this administrative regulation.

Section 4. State Special. (1) Boilers and pressure vessels of special design, which are equivalent to but are not eligible to be stamped to the ASME Code, shall meet the requirements of this section. The prospective owner or user who desires approval of the boiler installation or pressure vessel installation as a state special shall comply with the procedures established in this administrative regulation for each case.

(a) Prior to installation and operation of the boiler or pressure vessel, the proposed owner, user, or the owner's authorized agent shall make written application for permission to install the boiler or pressure vessel. The application shall be submitted to the commissioner.

(b) To establish ASME Boiler and Pressure Vessel Code equivalency, the following data, material, and information shall be submitted with the application for state special approval:

1. Detailed shop drawings and welding details of the proposed

construction. All materials shall be in the English language and United States units of measurements listed in the ASME Code;

2. Design calculations and supporting data, which shall include pressure (psi), temperature (deg. F.), use, and other service conditions;

3. Specifications for all construction materials shall conform to the applicable ASME Code standards or their suitable equivalent. If reference is made to a standard or specification of a country other than the United States, a copy shall be attached to indicate how the material is considered equivalent;

4. Copies of the welding procedures to be used and welding qualification test reports for each welding operator or welder to be used. The procedures and tests required in this paragraph shall be made in accordance with the ASME Boiler and Pressure Vessel Code, Section IX, "Welding Qualifications;"

5. If the design exceeds ASME Boiler and Pressure Vessel Code limitation, then API 579/ASME FFS-1, 2007 or later edition shall be used to determine equivalency of the submission;

6. Design drawings and calculations shall be certified by a mechanical engineer holding a professional engineer certification with a background in boilers and pressure vessels;

7. The manufacturer of the vessel shall identify the inspection agency responsible for the shop inspections and shall submit an equivalent ASME manufacturer's data report for the proposed vessel; and

8. The shop inspection agency shall furnish the qualifications of the authorized inspector assigned to make the shop inspections.

(2) Upon completion of the boiler or pressure vessel, a manufacturer's data report, signed by the manufacturer and authorized inspector, shall be submitted to the jurisdictional authorities containing the equivalent type data required by the ASME Boiler and Pressure Vessel Code. ASME Boiler and Pressure Vessel Code data report forms shall not be used.

(3) Upon arrival in the Commonwealth of Kentucky, the boiler or pressure vessel shall be inspected before installation by a boiler inspector to verify compliance with this section.

Section 5. General Requirements. (1) Safety appliances. The safety appliances required by these administrative regulations shall not be removed or tampered with except for the purpose of making repairs. The resetting of safety valves shall be done by a V-R stamp holder.

(2) Additional Hazards. If an additional hazard is possible by exposure of a pressure vessel to fire or other unexpected sources of external heat, supplemental pressure relieving devices shall be installed capable of protecting against excessive pressure. These supplemental pressure relieving devices shall be capable of preventing the pressure from rising more than twenty-one (21) percent above the MAWP.

(3) Pressure relieving device.

(a) A pressure relieving device shall be constructed, located, and installed so that the device is readily accessible for inspection and repair and cannot be readily rendered inoperative; and

(b) A pressure relieving device shall be selected so that the intended service of the pressure relieving device corresponds with the boiler or pressure vessel **on which** the pressure relieving device is installed.

(4) Relieving capacity. The minimum relieving capacity of the safety valve(s) or safety relief valve(s) shall be equal to or exceed the maximum output of the boiler.

(5) Omission or removal of pressure relieving device.

(a) If a pressure relieving device is omitted or removed, the device shall be omitted or removed in accordance with ASME Section VIII, Division 1, UG-140, Appendix M and ASME Section VIII, Division 2, Part 9, or Division 3, Part KR.

(b) If a pressure relieving device is omitted or removed pursuant to the standards established in subparagraph 1. of this paragraph, except ASME Section VIII, Division 1, Appendix M., the Boiler Inspection Section shall be notified prior to the omission or removal, and prior to the pressure vessel being placed in service.

(c) The required documentation of calculations pursuant to paragraph (a) in this subsection shall be submitted to the Boiler Inspection Section for review and acceptance or rejection of the proposed omission or removal.

(6) Location of discharges to atmosphere. The discharge of safety valves, blowoff pipes, and other outlets shall be located to prevent injury to persons and property.

(7) Boiler external piping. (a) Boiler external piping shall be attached in accordance with ASME Section I and B31.1.

(b)1. If two (2) or more boilers with manholes are connected to a common steam or high temperature water main or header, all welded external piping from the boiler out to the second stop valve shall be installed by a manufacturer or contractor authorized to use any one (1) of the ASME Code symbol stamps for pressure piping, power boilers, or assembly stamps.

2. The piping or fittings, adjacent to the welded joint farthest from the boiler, shall be stamped with the pressure piping, power boiler, or assembly code symbol stamp of the ASME when approved by the boiler inspector, special inspector, or owner-user inspector.

(8) Manually fired boilers.

(a) Gauge cocks. Each manually fired boiler shall comply with ASME Section I, except a manually fired boiler built before the publication of the 1991 Addenda to ASME Section I (1989 Edition), shall have three (3) or more gauge cocks located within the range of the visible length of the water glass, except if the boiler has two (2) water glasses with independent connections to the boiler located on the same horizontal lines and not less than two (2) feet apart. Two (2) gauge cocks shall be sufficient for boilers not over thirty-six (36) inches in diameter in which the heating surface does not exceed 100 square feet.

(b) Fusible plugs. A fire-actuated fusible plug, if used, shall conform to the requirements of ASME Section I, Paragraphs A-19, A-20 and A-21.

(9) Clearance.

(a) If boilers or pressure vessels are replaced or new boilers or new pressure vessels installed in either existing or new buildings, a minimum of two (2) feet shall be provided on all service sides. Boiler and pressure vessels having manholes shall have five (5) feet clearance between the manhole opening and any wall, ceiling, or piping that will prevent a person from entering the boiler or pressure vessel.

(b) Boilers shall be installed to:

1. Allow adequate space for their proper operation and their appurtenances;

2. Allow inspection of all surfaces, tubes, water walls, economizer, piping, valves, and other equipment; and

3. Allow for necessary maintenance and repair.

(c) A boiler or pressure vessel subject to external corrosion shall be installed so that there is sufficient access to all parts of the exterior to permit proper inspection of the exterior surfaces, or the boiler or pressure vessel shall have a connection so that the vessel can be readily removed from its location for inspection.

(d) If a cylindrical vessel is installed in a vertical position and subject to corrosion, the bottom head, if dished, shall be concave to pressure to facilitate proper drainage.

(e) The installed boiler or pressure vessel shall be located so that the data plate shall be accessible to the boiler inspector, special inspector, or owner-user inspector and shall not be obstructed by insulation or other covering not readily removable.

(10) Emergency shutdown switches.

(a) 1. Installations of power boilers, heating boilers, or hot water supply boilers shall have a manually operated remote boiler shutdown switch or circuit breaker located near the boiler room door, inside or outside of the boiler room, and marked for easy identification. Consideration shall also be given to the type and location of the switch to safeguard against tampering.

2. If there is more than one (1) door to or from the boiler room, a switch shall be located at each door.

3. A cover plate may be used to prevent accidental activation of the shutdown switch, if the cover plate is easily opened or removed.

4. If a shutdown switch is activated, the shutdown switch shall require a manual reset.

5. The shutdown switch shall cause the display or indicator lights on a boiler to turn off, or otherwise indicate that the boiler has been shut down.

6. If a new boiler is installed in an existing boiler room, all

existing boilers shall be connected to the emergency shutdown switch.

(b) A power boiler or heating boiler installed prior to July 1, 2015 shall be exempt from paragraph (a) of this subsection unless the power boiler or heating boiler installed prior to July 1, 2015 is located in a hospital, rest home, school, day care, jail, mental institution, or similar institutional facility.

(c) Paragraph (a) of this subsection shall not apply to manufacturing and power generating facilities.

Section 6. Incorporation by Reference. (1) The "National Board Inspection Code," 2015 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, Boiler Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. [Section 1. Minimum Standards. (1) Boiler and pressure vessels. All new boilers and pressure vessels, except those approved pursuant to Section 5 of this administrative regulation as "state specials," shall comply with applicable provisions of 815 KAR Chapter 15 and the ASME Boiler and Pressure Vessel Code, 2013 Edition, as established by KRS 236.040(2). All pressure vessels for human occupancy shall comply with the ASME Safety Standard for Pressure Vessels for Human Occupancy, 2012 Edition, as established by KRS 236.040(3).

(a) The ASME Boiler and Pressure Vessel Code is published by and available from the American Society of Mechanical Engineers (ASME), Two Park Avenue, New York, New York 10017.

(b) A copy is also available to be inspected, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday from 8 a.m. to 4:30 p.m.

(c) Compliance with a later edition of this code shall be deemed equivalent and may be used in lieu of the edition specified.

(2) Installation of all boilers and pressure vessels shall conform to the National Board Inspection Code Part 1, 2013 edition.

(3) Details of vessels of special design not covered by the code or not fully complying with the ASME Code shall be submitted to the Boiler Section of the Division of Plumbing and approval secured before field erection or construction shall begin.

(4) Pressure piping.

(a) All new pressure piping installations connected to the boiler or pressure vessel shall conform to the National Board Inspection Code Part 1, 2013 edition, and the applicable standards referenced in this subsection, as established by KRS 236.040(2):

1. ASME Code for Power Piping, B31.1, 2012 edition;

2. ASME Code for Process Piping, B31.3, 2012 edition;

3. ASME Code for Refrigeration Piping and Heat Transfer Components, B31.5, 2013 edition;

4. ASME Code for Building Services Piping, B31.9, 2011 edition; and

5. ASME Code for Hydrogen Piping and Pipelines, B31.12, 2014 edition.

(b) The Piping Codes are published by and available from the American Society of Mechanical Engineers, Two Park Avenue, New York, New York 10017.

(c) Copies are also available to be inspected at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday from 8 a.m. to 4:30 p.m.

(d) Compliance with a later edition of a code referenced in this subsection shall be deemed equivalent and may be used in lieu of the edition specified.

(e) The maximum allowable design temperature and pressure of the piping system and all of its component parts shall meet or exceed the operating control settings of the boiler or pressure vessel.

(f) If the maximum allowable design temperature or pressure of the boiler exceeds the maximum design limits of the piping system or any of its component parts, the pipe or its components shall not

be used unless the temperature and pressure controls on the boiler are permanently set to prevent operation in excess of the design limits of the piping system and safety valves are added to activate at the maximum design limits of the piping system.

(5) Welded joints. Welded joints shall be installed by qualified welders in accordance with the ASME Code, Section IX, as required by the standards referenced in subsection (4) of this section. Welded joints shall be visually inspected for complete and full root penetration, soundness of the weld and freedom from undercutting, cracking and other surface imperfections in accordance with Section 3(6) of this administrative regulation.

Section 2. Manufacturer's Data Report. A manufacturer's data report on all boilers of steel construction and all pressure vessels constructed in accordance with the ASME Boiler and Pressure Vessel Code shall be filed with the National Board of Boiler and Pressure Vessel Inspectors unless the boiler or pressure vessel is exempted by KRS 236.060.

Section 3. Installation Inspection or First Inspection and Stamping of New Boilers and Pressure Vessels. (1) Stamping. Upon completion of the installation or at the time of first inspection, a Commonwealth of Kentucky serial number shall be assigned to the boiler or pressure vessel and shall be applied to the boiler or pressure vessel as follows:

(a) Steel boilers and pressure vessels shall be stamped with the letters "KY" followed by the state serial number assigned. The stamping shall be accomplished as established in subparagraphs 1. and 2. of this paragraph.

1. Stamping shall be applied in the immediate area of code stamping on the boiler or pressure vessel and shall be in letters and numbers not less than five-sixteenths (5/16) inch in height.

2. A metal tag shall be used showing identical lettering and serial number as used in the stamping. This tag shall be securely affixed in the area of the manufacturer's name plate or data plate.

(b) Cast iron boilers shall have securely attached to the boiler (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height on which the letters "KY" and the state serial number shall be stamped.

(c) Hot water supply boilers shall have securely attached to the heater (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height on which the letters "KY" and the state serial number shall be stamped.

(d) A boiler or pressure vessel having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the Commonwealth of Kentucky may be accepted by the department if the person desiring to install the boiler or pressure vessel shall make application for the installation and shall file with this application the manufacturer's data report covering the construction of the boiler in question.

(2) Shop or field inspection. Any new power boiler, steel heating boiler, pressure vessel or piping being constructed for installation in the Commonwealth of Kentucky shall be shop or field inspected in accordance with the provisions of the applicable section of the ASME Boiler and Pressure Vessel Code and shall be stamped with the applicable ASME code stamp and the applicable national board registration number. Upon request, copies of the data sheets shall be supplied to the Boiler Inspection Section.

(3) Installation inspection. New installations of boilers and of pressure vessels and associated pressure piping shall be inspected by the department for compliance with applicable ASME Boiler and Pressure Vessel Code requirements and this administrative regulation. The owner may inspect B31.3 piping systems. The inspector shall notify the department as established in subsection (4) of this section.

(4) Non-registered boilers and non-registered pressure vessels. Boiler inspectors, special boiler inspectors, and owner-user inspectors shall notify the department within thirty (30) days of locating any non-registered boiler or non-registered pressure vessel.

(5) General welding. If welded assembly has been used, the installing contractor shall present for the boiler inspector's, special

inspector's, or owner's piping inspector's review the installing contractor's welding procedures and proof of qualification and continuity records of the welders and welding operators. The contractor shall be responsible for the quality of the welding done by the contractor's organization.

(6) Welded joints. If applicable codes or engineering specifications require additional tests or if the visual inspection reveals a potential defect or if joints have been insulated prior to inspection, the boiler inspector, special inspector, or owner's piping inspector may require other nondestructive tests, such as radiography, to be performed by the contractor to verify the soundness of the weld. All tests or retests required by the boiler inspector, special inspector, or owner's piping inspector shall be at the owner's or contractor's expense.

(7) Hydrostatic pressure test.

(a) A hydrostatic pressure test, when applied to a boiler or pressure vessel of riveted or welded construction, shall conform to the testing procedures and pressures as specified in the original code of construction. The pressure shall be under proper control so that in no case shall the required test pressure exceed the testing requirements listed in the original code of construction.

(b) During the hydrostatic pressure test, the safety valve or valves shall be removed or each valve disc shall be held down by means of a testing clamp (hand tight) and not by screwing down the compression screw upon the spring.

(c) The minimum temperature of the water used to apply a hydrostatic test shall not be less than ambient temperature, but in no case less than seventy (70) degrees Fahrenheit and the maximum temperature shall not exceed 120 degrees Fahrenheit.

(d) If the only purpose of the test is to determine tightness, the test pressure shall be equal to the relieving pressure of the safety valve having the lowest relief setting.

(8) Pressure piping systems installed in association with the boiler or pressure vessel shall be inspected for proper materials, adequate pressure and temperature ranges for the boiler operation and for adequate support and tightness as established in paragraphs (a) and (b) of this subsection.

(a) Hydrostatic tests. Hydrostatic or other leak tests shall be performed on the pressure piping system connected to the boiler or pressure vessel and shall conform to the procedures and test pressures outlined in the original code of construction.

(b) Code compliance. Pressure piping inspection shall include determining compliance with design plans, material specifications and ASME Code for the piping and component parts. The contractor shall document to the boiler inspector, special inspector, owner's piping inspector, or owner-user inspector that:

1. The piping installation and each of its component parts conforms to the design;

2. The materials used and method of construction meets the manufacturer's procedures and specifications; and

3. The system is utilizing the materials and equipment specified within the temperature and pressure ranges set forth in the design and as required by Section 1(4)(f) of this administrative regulation.

Section 4. Notification of Inspection. If an inspection is required by this administrative regulations, the owner or user shall prepare each boiler, pressure vessel, and pressure piping system for inspection and shall prepare for and apply a hydrostatic pressure or other leak test on the date specified by the boiler inspector, special inspector, or owner-user inspector. The inspection shall not be less than seven (7) days after the date of notification.

Section 5. State Special. (1) Boilers and pressure vessels of special design that are equivalent to, but are not eligible to be stamped to, the ASME Code shall meet the requirements of this section. The prospective owner or user who desires approval of the boiler installation as a state special shall pursue in each individual case the procedures established in this section.

(a) Prior to installation and operation of the boiler or pressure vessel, the proposed owner, user, or the owner's authorized agent shall make written application for permission to install the boiler or pressure vessel in the state of Kentucky. The application shall be directed to the Chief Boiler Inspector, Division of Plumbing,

Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412.

(b) To establish ASME Boiler and Pressure Vessel Code equivalency, the following data, material and information shall be submitted with the application for state special approval to the Boiler Inspection Section, Department of Housing, Buildings and Construction for review by the Board of Boiler and Pressure Vessel Rules:

1. Detailed shop drawings and welding details of the proposed construction. All materials shall be in the English language and United States units of measurements listed in the ASME Code.

2. Design calculations and supporting data which shall include pressure (psi), temperature (deg. F.), use, and other service conditions.

3. Specifications for all construction materials. The specifications shall conform to the applicable ASME Code standards or their suitable equivalent. If reference is made to a standard or specification of a country other than the United States, a copy shall be attached to indicate how the material is considered equivalent.

4. Copies of the welding procedures to be used and welding qualification test reports for each welding operator or welder to be used. The procedures and tests required in this paragraph shall be made in accordance with the ASME Boiler and Pressure Vessel Code, Section IX, "Welding Qualifications."

5. If the design exceeds ASME Boiler and Pressure Vessel Code limitation, API 579/ASME FFS-1, 2007 or later edition shall be identified in the submittal.

6. Design drawings and calculations shall be certified by a professional engineer holding a license acceptable to the boiler inspection section.

7. The manufacturer of the vessel shall identify the inspection agency responsible for the shop inspections and shall submit an equivalent ASME manufacturer's data report for the proposed vessel.

8. The shop inspection agency shall furnish the qualifications of the authorized boiler inspector or special inspector assigned to make the shop inspections.

(2) Upon completion of the boiler or pressure vessel, a manufacturer's data report, signed by the manufacturer and shop inspector, shall be submitted to the jurisdictional authorities containing the equivalent type data required by the ASME Boiler and Pressure Vessel Code. ASME Boiler and Pressure Vessel Code data report forms shall not be used.

(3) Upon arrival in the state of Kentucky, the boiler or pressure vessel shall be inspected before installation by a boiler inspector in the employ of the department to verify that the requirements of this section have been complied with and that the vessel is properly marked and stamped for identification.

Section 6. General Requirements. (1) Low water fuel cutoff or water-feeding device (low pressure boilers).

(a) Automatically fired steam or vapor system boilers shall have an automatic low water fuel cutoff located to automatically cut off the fuel supply if the water falls to the lowest part of the water gauge glass. If a water-feeding device is installed, it shall be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber and located to supply feed water.

(b) A fuel cutoff or water-feeding device may be attached directly to a boiler.

(c) A fuel cutoff or water-feeding device may also be installed in the tapped openings available for attaching a water glass directly to a boiler under the following conditions:

1. The connections shall be made to the boiler with nonferrous tees or Y's not less than one-half (1/2) inch pipe size between the boiler and the water glass so that the water glass is attached directly and as close as possible to the boiler;

2. The run of the tee and Y shall take the water glass fittings and the side outlet or branch of the tee or Y shall take the fuel cutoff or water-feeding device.

(d) The ends of all nipples shall be reamed to full size diameter.

(e) Fuel cutoffs and water-feeding devices embodying a separate chamber shall have a vertical drain pipe and a blowoff valve not less than three-fourths (3/4) inch pipe size and located at

the lowest point in the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

(2) Safety appliances. The safety appliances established by these administrative regulations shall not be removed or tampered with except for the purpose of making repairs. The resetting of safety valves shall be done by a V-R stamp holder.

(3) Location of discharges to atmosphere. The discharge of safety valves, blowoff pipes, and other outlets shall be located so as to prevent injury to personnel.

(4) Pressure reducing valves (high pressure boilers).

(a) If pressure reducing valves are used, one (1) or more relief or safety valves shall be provided on the low pressure side of the reducing valve in case the piping or equipment on the low pressure side does not meet the requirements for the full initial pressure. The relief or safety valves shall be located either adjoining or as close as possible to the reducing valve.

(b) Proper protection shall be provided to prevent injury or damage caused by the escaping steam from the discharge or safety valves if vented to the atmosphere.

(c) The combined discharge capacity of the relief valve shall be such that the pressure rating of the lower pressure piping or equipment shall not be exceeded in case the reducing valve sticks open.

(d) The use of hand-controlled bypasses around reducing valves shall be permissible. The bypass, if used around a reducing valve, shall not be greater in capacity than the reducing valve unless the piping or equipment is adequately protected by relief valves or meets the requirements of the high pressure system.

(e) A pressure gauge shall be installed on the low pressure side of a reducing valve.

(5) Electric boilers. All appliances required for electric boilers shall be attached in accordance with the National Electrical Code and the following requirements:

(a) The grounding of the shell shall be permanently fastened on some part of the boiler and shall be grounded in accordance with the edition of the National Electrical Code in effect at the time the permit for the installation was made.

(b) A suitable screen or guard shall be provided around high tension bushings and a high voltage warning sign shall be posted. This screen or guard shall be located to prohibit anyone working around the boiler to accidentally come in contact with the high tension circuits. During the adjustment of safety valves, the power circuit to the boiler shall be open.

(c) The boiler may be under pressure, but the power line shall be open while the operator is making the necessary adjustments.

(d) Each KW of electrical energy consumed by an electric boiler operating at maximum rating shall be considered the equivalent of one (1) square foot of heating surface.

(6) Clearance:

(a) If boilers are replaced or new boilers installed in either existing or new buildings, a minimum of two (2) feet shall be provided on all service sides, unless the installation allows for proper maintenance without the separation. Vessels having manholes shall have five (5) feet clearance between the manhole opening and any wall, ceiling, or piping that will prevent a person from entering the boiler or vessel.

(b) Boilers shall be installed to:

1. Allow adequate space for their proper operation and their appurtenances;

2. Allow inspection of all surfaces, tubes, water walls, economizer, piping, valves, and other equipment; and

3. Allow for necessary maintenance and repair.

(7) Emergency devices for certain installations:

(a) 1. Installations of power boilers, heating boilers, or hot water supply boilers shall have a manually operated remote heating plant shutdown switch or circuit breaker located just outside the boiler room door and marked for easy identification. Consideration shall also be given to the type and location of the switch to safeguard against tampering.

2. If the boiler room door is on the building exterior, the switch shall be located just inside the door. If there is more than one (1) door to the boiler room, a switch shall be located at each door.

3. For an atmospheric gas burner, and an oil burner where a

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

fan is on a common shaft with the oil pump, the complete burner and controls shall be shut off.

4. For a power burner with a detached auxiliary, only the fuel input supply to the firebox shall be shut off.

(b) A power boiler or heating boiler installed prior to July 1, 2015 shall be exempt from paragraph (a) of this subsection unless the power boiler or heating boiler installed prior to July 1, 2015 is located in a hospital, rest home, school, mental institution, or similar institutional facility.

(c) Paragraph (a) of this subsection shall not apply to manufacturing and power generating facilities.

Section 7. Incorporation by reference. (1) The "National Board Inspection Code Part 1," 2013 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, Boiler Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.]

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: September 14, 2017

FILED WITH LRC: September 14, 2017 at 4 p.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing, Boiler Section
(As Amended at ARRS, November 13, 2017)

815 KAR 15:026. Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors.

RELATES TO: KRS 236.010, 236.030, 236.110, 236.240, 236.250, 236.990

STATUTORY AUTHORITY: KRS 236.030, 236.040, 236.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030 requires/authorizes [requires] the commissioner[, through the Board of Boiler and Pressure Vessel Rules,] to promulgate administrative regulations that [to] establish reasonable standards for the inspection and repair of boilers and pressure vessels. This administrative regulation establishes the requirements for inspections and safe maintenance of boilers and pressure vessels.

Section 1. Frequency of Inspection of Existing Vessels. (1) Boiler inspections. Boilers shall be inspected pursuant to KRS 236.110 upon notification by a boiler inspector or/and [; or owner-user inspector, a boiler or pressure vessel subject to an annual or semiannual inspection pursuant to KRS 236.110 shall be prepared for the inspection or hydrostatic or other leak test by the owner or user].

(2) Pressure vessel inspections. Pressure vessels shall be reinspected in accordance with this subsection and subsection (3) of this section.

(a) Pressure vessels exceeding 200 psi MAWP shall be inspected every five (5) years.

(b) Hot water storage tanks, sterilizers, and autoclaves shall be inspected every four (4) years.

(c) Pressure vessels for human occupancy and hyperbaric chambers shall be inspected every two (2) years.

(d) Jacketed kettles shall be inspected every two (2) years.

(e) Deareators shall be inspected externally and internally every ten (10) years.

(f) All pressure vessels shall be re-inspected at the time of repair, alteration, or relocation.

(3) Inspection times. Except as established in 815 KAR 15:027, inspections made by boiler inspectors shall be conducted during normal business hours of the department between 8:00 a.m.

and 4:30 p.m. Monday through Friday.

Section 2. Preparation for Inspections and Tests. (1) The owner or user shall prepare the boiler or pressure vessel for [internal] inspection if requested [and apply the required hydrostatic or other leak test on the date specified] by the boiler inspector, special boiler inspector, or owner-user inspector.

(2) Inspections [The date set for inspection] shall be conducted within [a minimum of] seven (7) days of the date of [following] notification by the boiler inspector, special boiler inspector, or owner-user inspector.

(3) [(2)] The owner or user shall prepare a boiler or pressure vessel for [internal] inspection by ensuring that [pursuant to paragraphs (a) through (f) of this subsection.]

(a) Water shall be drawn off and the boiler thoroughly washed; [-]

(b) The manhole and handhole plates, washout plugs, and the plugs in water column connections shall be removed and the furnace and combustion chambers thoroughly cooled and cleaned; [-]

(c) The grate of an internally fired boiler, if present, shall be removed; [-]

(d) [During the annual inspection,] Brickwork shall be removed as required by the boiler inspector or special boiler inspector [in order] to determine the condition of the boiler, header, furnace, supports, or other parts; and [-]

(e) [The steam gauge shall be removed for testing.]

(f) Leakage of steam or hot water into the boiler shall be cut off by disconnecting or blocking off the pipe or valve at the most convenient point.

(4) [(3)] If the boiler or pressure vessel is jacketed [and the longitudinal seams of shells, drums, or domes are not visible], enough of the jacketing [; setting wall, or other forms, casing or housing] shall be removed upon the request of the boiler inspector, or/ special boiler inspector, or owner-user inspector so that [the size of the rivets, pitch of the rivets, and other data necessary to determine] the safety of the boiler or pressure vessel can be determined. If the covering cannot be removed at that time, the boiler inspector, special boiler inspector, or owner-user inspector shall order the boiler or pressure vessel out of service until the covering can be removed and a proper examination made [obtained].

(5) [(4)] If a boiler has not been prepared for an [internal] inspection in accordance with the requirements of this section or the owner or user fails to comply with the requirements for the hydrostatic or other leak test established in this administrative regulation, the boiler inspector or special boiler inspector may decline to make the inspection or test and the inspection certificate shall be withheld until the owner or user complies with the requirements. [(5) Lap seam crack. (a) A crack in the lap seam extending parallel to the longitudinal joint between or adjacent to rivet holes of the shell or drum of a boiler or pressure vessel shall cause the vessel to be immediately discontinued from use.]

(b) If the boiler or pressure vessel is not more than fifteen (15) years of age, a complete new course of the original thickness may be installed at the discretion of the boiler inspector, special inspector, or owner-user inspector and shall be after approval by the chief boiler inspector.

(c) Patching shall be prohibited.

(6) Hydrostatic pressure tests. If a hydrostatic test is [shall be] applied to an existing installation, the pressure shall be as established in paragraphs (a) through (d) of this subsection.

(a) For determining tightness, the pressure shall be equal to the release pressure of the safety valve or valves having the lowest release setting.

(b) 1. For determining safety or the strength of a vessel and associated piping as well as tightness, the test shall conform to the procedures and the pressure shall conform to the test pressures established in the original code of construction but not exceed one and one-half (1 1/2) times the MAWP [maximum allowable working pressure (MAWP)], except for a locomotive [;] type boiler, in which case the pressure shall be one and one-fourth (1 1/4) times the MAWP [maximum allowable working pressure (MAWP)].

2. The pressure shall be under proper control to prevent the

required test pressure from exceeding testing requirements listed in the original code of construction.

(c) The temperature of the water used for the hydrostatic test shall not be less than ambient temperature[~~7~~], and shall not be less than seventy (70) degrees Fahrenheit for boilers or thirty (30) degrees Fahrenheit above the minimum design metal temperature for pressure vessels, nor high enough to allow the metal temperature to exceed 120 degrees Fahrenheit.

(d) Minimum test pressure shall not be less than eighty (80) percent of the MAWP[~~maximum allowable working pressure (MAWP)~~] or the set pressure of the pressure-relieving device, whichever is greater.

Section 3. Safety Factors in Existing Boilers and Pressure Vessels. (1) Maximum pressure and temperature.

(a) Code boilers. The MAWP[~~maximum allowable working pressure (MAWP)~~] and temperature for standard pressure vessels and boilers shall be determined in accordance with the original code of construction[ASME Code Edition (year and addenda) under which the boiler or pressure vessel was constructed and stamped].

(b) Noncode high pressure boilers. The MAWP of a noncode high pressure boiler shall be calculated in accordance with Section I of the ASME Boiler and Pressure Vessel Code.

(c) Noncode welded heating boilers.

1. The MAWP of a noncode steel or wrought iron heating boiler of welded construction shall not exceed fifteen (15) psi.

2. For other than steam service, the MAWP shall be calculated in accordance with Section IV of the ASME Boiler and Pressure Vessel Code as established by KRS 236.040(2).

(d) Noncode cast iron heating boilers. The MAWP of a noncode boiler, composed principally of cast iron shall not exceed fifteen (15) psi for steam service or thirty (30) psi for hot water service.

(2) Notice of accident or malfunction.

(a) If an accident or malfunction renders a boiler or pressure vessel inoperative, the owner, user, or insurer shall immediately notify the Boiler Inspection Section and submit a detailed report of the accident or malfunction.

(b) 1. For any[~~If there is a serious~~] accident, including an explosion, resulting in property damage, injury to a person[~~for persons~~][~~personnel~~], or loss of life, the owner, user, or insurer[~~notice~~] shall give notice[~~be given~~] immediately by phone or electronic mail to the Boiler Inspection Section.[~~and~~]

2. The boiler, pressure vessel, or any of the parts shall not be removed or disturbed before an inspection has been made by a boiler inspector or special boiler inspector, except for the purpose of saving[a] human life.

(3) Unsafe[~~Condemned~~] boilers and pressure vessels. A boiler or pressure vessel inspected by a boiler inspector or a special boiler inspector and found unsafe for further use[~~by the chief boiler inspector or boiler inspector~~] shall be removed from service, until the boiler or pressure vessel has been sufficiently repaired and inspected by a boiler inspector or a special boiler inspector[~~stamped by the chief boiler inspector or boiler inspector with the letters "XX" prior to the letters "KY" and after the numbers to designate a condemned boiler or pressure vessel, i.e., XX Kentucky 12345 XX~~].

(4)[~~A person, firm, partnership, or corporation using or offering for sale a condemned boiler or pressure vessel for operation within this Commonwealth shall be subject to the penalties in KRS 236.990.~~]

(5) Nonstandard boilers and pressure vessels. Shipment of a nonstandard boiler, pressure vessel, or hot water supply boiler into this state shall be prohibited, unless exempted under KRS 236.060.

(6) Used boilers. If a nonstandard boiler, pressure vessel, or hot water supply boiler is removed from use, the boiler, pressure vessel, or hot water supply boiler shall not be reinstalled.

(7) Removal of safety appliances.

(a) A person shall not attempt to remove or work on a safety appliance while a boiler or pressure vessel is in operation unless under the direction of a boiler inspector or special boiler inspector, or permitted by these administrative regulations[~~under 815 KAR~~

15:040, Section 1(3)(j)].

(b) If a safety appliance is repaired during an outage of a boiler or pressure vessel, the appliance shall be reinstalled and in proper working order before the vessel is returned to service.

(5) Maintenance.[(8)] The boiler, pressure vessel, and pressure piping shall be maintained in accordance with the minimum requirements of the edition of the ASME Code that was in effect at the time[~~when~~] the boiler, pressure vessel, and pressure piping was constructed and installed.

Section 4. Used Vessels. (1) Used Vessel Inspections[~~boilers or pressure vessels~~]. Before a used boiler or pressure vessel is placed into service[~~brought into Kentucky for use~~], it shall be inspected by a boiler inspector, and the inspection may include an internal and external visual inspection, a hydrostatic test, or other non-destructive examination[~~or a special boiler inspector and the data shall be filed by the owner or user of the boiler or pressure vessel with the Boiler Inspection Section for approval~~].

(2) Reinstalled boilers or pressure vessels.

(a) If a boiler or pressure vessel is moved and reinstalled, the fittings and appliances shall comply with the ASME Boiler and Pressure Vessel Code, 2013 Edition or subsequent editions, as established by KRS 236.040(2), and 815 KAR Chapter 15.

(b) All pressure vessels for human occupancy shall comply with the ASME Safety Standard for Pressure Vessels for Human Occupancy, 2012 Edition or subsequent editions, as established by KRS 236.040(3), and 815 KAR Chapter 15.

(3) Appeal of an inspection decision[~~Unsafe conditions~~].

(a) If the owner or user does not concur with the boiler inspector's[~~or special inspector's~~] decision regarding the condition of the boiler or pressure vessel, the owner or user may appeal to the commissioner who shall[~~may~~] request a joint inspection by the chief boiler inspector and the boiler inspector[~~or special boiler inspector~~].

(b) The chief boiler inspector and the[~~Each~~] boiler inspector[~~or special inspector~~] shall render a report to the commissioner, who shall render the final decision, based upon the data contained in all the inspectors' reports.

Section 5. Repairs and Alterations. (1)[~~Repairs.~~]

(a) ~~A repair shall require prior approval of a boiler inspector or special inspector and permits as required by KRS 236.240 and 236.250.~~

(b) Repair or alteration to a boiler, pressure vessel, and the appurtenances[~~thereto~~] shall conform to the requirements of the National Board Inspection Code Part 3, 2015 Edition, or subsequent editions[~~2013 Edition. Compliance with a later edition of the National Board Inspection Code shall be deemed equivalent and may be used in lieu of the edition specified~~].

(2)[~~(c)~~] Repairs or alterations to pressure relieving devices shall be made by a firm possessing the National Board Certificate of Authorization for Use of the Valve Repair (V-R) Stamp and the valve shall be stamped with the V-R stamp upon completion of the repair.

(3)[~~(d)~~] Repair to a boiler or a pressure vessel shall not be initiated without the authorization of the inspector, who shall be satisfied that the welding procedures and welders are qualified and that the repair methods are in accordance with the standards established in this administrative regulation.

(e) ~~The inspector may give prior approval for repairs of a routine nature. In every case, the inspector shall be advised of each repair under a prior agreement.~~

(2) Alterations:

(a) ~~Except as permitted for owner-users in, alterations to boilers and pressure vessels shall be performed by an authorized repairer.~~

(b) Alteration to a boiler or pressure vessel shall not be initiated without the authorization of an inspector, who shall be satisfied that the alteration methods and calculations are in accordance with the standards established in this administrative regulation.

(c) If the inspector considers it necessary, the inspector shall make an inspection of the object before granting authorization.

(3)(a) It shall be the responsibility of the organization making the repair or alteration to coordinate the acceptance inspection of

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

the repair or alteration.

~~(b) Authorized repairers shall submit the appropriate National Board Inspection Code form to the division upon completion of repairs or alterations.~~

~~(4) An owner-user inspector may inspect[perform acceptance inspections of] repairs and alterations to[boilers and] pressure vessels that the owner-user inspector's company owns or operates[if performed by the inspector's employer].~~

Section 6. Inspection by Special Boiler Inspectors. (1) A special boiler inspector shall submit an inspection report to the Boiler Inspection Section[in the Division of Plumbing] on the applicable National Board Inspection Code Report of Inspection standard form or its electronic equivalent.

(2) An insurance company shall notify the Boiler Inspection Section of a new or a cancelled policy for a boiler or pressure vessel[risk] within thirty (30) days of the effective date of the policy[each boiler or pressure vessel risk written, cancelled, or not renewed].

(3) If a special boiler inspector finds, upon[the first] inspection of a boiler or pressure vessel[, the boiler or pressure vessel or an appurtenance,] a condition causing the special boiler inspector's company to refuse or suspend insurance of the boiler or pressure vessel, the company shall immediately notify the Boiler Inspection Section and submit a report of the defect. [(4) If an external inspection reveals evidence of a leak or crack, enough of the covering of the boiler or pressure vessel shall be removed to satisfy the boiler inspector or special inspector of its safety. If the covering cannot be removed at that time, the boiler inspector or special inspector shall order the operation stopped until the covering may be removed and a proper examination made.]

Section 7. Inspection by Owner-User Inspectors. (1) An owner-user inspector shall submit an inspection report to the Boiler Inspection Section[in the Division of Plumbing] on the applicable National Board Inspection Code Report of Inspection standard form, or its electronic equivalent.

(2) An owner-user company shall immediately notify the Boiler Inspection Section of a defective pressure vessel and submit a report of the defect using the applicable National Board Inspection Code Report of Inspection standard form or its electronic equivalent.

~~(3)[If an external inspection reveals evidence of a leak or crack, enough of the covering of the pressure vessel shall be removed to satisfy the owner-user inspector of the pressure vessel's safety. If the covering cannot be removed at that time, the owner-user inspector shall order the operation stopped until the covering may be removed and a proper examination made.~~

(4) If there is a disagreement as to the acceptance of any condition of a pressure vessel or repair by the owner-user inspector and owner-user company, the department shall make the final determination in accordance with the standards established in this administrative regulation.

Section 8. Inspection by Owner's Piping Inspector. (1)(a) Owner's piping inspectors shall inspect all new, replacement, and repaired piping for compliance to the applicable ASME piping code to which the piping is installed.

(b) The owner's piping inspector shall sign the permit filed by the boiler and pressure vessel[licensed] contractor performing the piping installation or repair and forward it to the Boiler Inspection Section [to show acceptance].

(2)(a) The owner facility license and the independent inspection agency[owner's piping inspector] shall maintain copies of the material mill test reports and pressure test information including type of test, pressure at start and end of test, and duration of test for five (5) years pursuant to KRS 236.097(1)(h) and (3)(f).

(b) If welded joints are utilized, the file shall contain the qualified welder identification, weld procedure, and procedure qualification used.

(3) If there is a disagreement as to the acceptance of any condition of the piping installation or repair by the owner's piping inspector and owner's user facility, the department shall make the

final determination in accordance with the standards established in this administrative regulation.

Section 9. Incorporation by Reference. (1) The "National Board Inspection Code[Part—3]", 2015 Edition[2013—Edition], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, Boiler Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. [(3) The National Board Inspection Code is also available, subject to applicable copyright law, from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Grupper Avenue, Columbus, Ohio 43229.]

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: September 14, 2017

FILED WITH LRC: September 14, 2017 at 4 p.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing, Boiler Section (As Amended at ARRS, November 13, 2017)

815 KAR 15:027. Fees and certificates[and fees] for boiler and pressure vessel inspection.

RELATES TO: KRS Chapter 236

STATUTORY AUTHORITY: KRS 236.030, 236.120, 236.130, 236.240, 236.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030 and 236.130 require[authorize] the commissioner[, through the Board of Boiler and Pressure Vessel Rules,] to promulgate administrative regulations that establish[to fix] reasonable inspection fees for boilers, pressure vessels, and pressure piping. This administrative regulation establishes the fees for permits and inspections for boilers[boiler], pressure vessels, and pressure piping[inspections].

Section 1. Fees. (1) Permit Fees.

(a) Permits for new installations of boilers, pressure vessels, and pressure piping shall be based upon the total dollar value of each installation, either actual or estimated. The installing boiler and pressure vessel contractor shall identify the applicable cost range, which shall include both labor and material costs, but the boiler and pressure vessel contractor shall not be required to identify the exact cost.

(b) The fees for permits for new installations shall be paid prior to installation.

(c) The permit fees for boilers, pressure vessels, or pressure piping are as follows:

Cost of Inspected Item	Fee
<u>\$2,000 or less</u>	<u>\$70</u>
<u>\$2,001 to \$10,000</u>	<u>\$130</u>
<u>\$10,001 to \$25,000</u>	<u>\$200</u>
<u>\$25,001 to \$50,000</u>	<u>\$250</u>
<u>\$50,001 to \$75,000</u>	<u>\$300</u>
<u>\$75,001 to \$100,000</u>	<u>\$410</u>
<u>\$100,001 to \$150,000</u>	<u>\$520</u>
<u>\$150,001 to \$200,000</u>	<u>\$630</u>
<u>\$200,001 to \$250,000</u>	<u>\$740</u>
<u>\$250,001 to \$300,000</u>	<u>\$850</u>
<u>\$300,001 to \$400,000</u>	<u>\$960</u>
<u>\$400,001 to \$500,000</u>	<u>\$1,350</u>
<u>\$500,001 to \$600,000</u>	<u>\$1,500</u>

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

\$600,001 to \$700,000	\$1,650
\$700,001 and over	\$1,850

(d)1. If a boiler and pressure vessel contractor is unable to complete the work after a permit has been issued and work has begun/began, the permit may be taken over and responsibility assumed by a different boiler and pressure vessel contractor.

2. The new boiler and pressure vessel contractor shall pay a fee of seventy (70) dollars for a transferred permit as outlined in subparagraph 1. of this paragraph.

(2) Fees for Reinspection.

(a) Fees for the annual reinspection of power boilers pursuant to KRS 236.110(1)(a) shall be charged at the rates established in this subsection.

<u>1. (1) INTERNAL INSPECTIONS OF POWER BOILERS</u>	
Heating Surface (Square Feet)	Fee
100 or less	\$35
101 to 1,000	\$50
1,001 to 4,000	\$90
4,001 to 10,000	\$120
10,001 and over	\$200
<u>2. (2) EXTERNAL INSPECTIONS OF POWER BOILERS</u>	
Heating Surface (Square Feet)	Fee
100 or less	\$30
101 and over	\$35

(b) Fees for the biennial reinspection of heating boilers pursuant to KRS 236.110(1)(b) shall be charged at the rates established in this subsection.

Boilers with manway where internal inspection required	\$55
Other heating boilers	\$35
Hot water supply boilers	\$25
Miniature boilers	\$25

(c)1. The fee for the initial inspection of an existing pressure vessel that has been in service for at least five (5) years and has not received a certificate of inspection shall be twenty-five (25) dollars.

2. The fee for the initial inspection of an existing pressure vessel that has been in service for less than five (5) years shall be the same as the permit fees in subsection 1 of this section.

(d) The fee for a reinspection of a pressure vessel pursuant to 815 KAR 15:026 Section 1(2) shall be twenty-five (25) dollars.

(3)(a) An inspection made by boiler inspectors at the request of a boiler manufacturer, installer, engineering contractor, or owner conducted outside of normal business hours as established in 815 KAR 15:025 and 815 KAR 15:026 shall be charged at the rates established in this subsection:

1. \$450 for one-half (1/2) day of four (4) hours or less;
2. \$600 for one (1) day of more than four (4) hours to eight (8) hours;
3. \$600 for any part of a Saturday, Sunday, or state holiday; and
4. Forty (40) dollars per hour for overtime in excess of eight (8) hours in any one (1) day.

(b) In addition to the fees listed in this subsection, the manufacturer, installer, engineering contractor, or owner shall be charged for mileage at the current state rate. The manufacturer, installer, engineering contractor, or owner may be charged for lodging, meals, and incidentals of the boiler inspector if the inspection requires more than eight (8) hours.

(c) The fees established in this subsection shall be in addition to the regular fees for permits, inspections, and certificates of inspection.

(4) Charges for inspection of a used boiler or used pressure vessel shall be at the rates established in subsection (1) paragraph (c) of this section.

(5) Inspections of a manufacturing facility at the request of the manufacturer for the issuance of ASME or National Board Certificates of Authorization shall be charged at the rates established in this subsection:

- (a) Initial inspection for ASME certificates - \$1,200;
- (b) Renewal of ASME certificates - \$950; and
- (c) Initial inspections and renewals for National Board R or V-R certificate - \$400.

Section 2. Certificates of Inspection. If the owner or user of the boiler or pressure vessel required to be inspected refuses to allow an inspection to be made, or refuses to pay the required fee, the certificate of inspection shall be suspended by the commissioner until the owner or user complies with the requirements in KRS 236 and 815 KAR Chapter 15. [Section 4. Boiler Certificates of Inspection. (1) A boiler or pressure vessel complying with 815-KAR Chapter 15 shall be issued the certificate required by KRS 236.120 upon payment of a fifteen (15) dollar fee.

(2) If the owner or user of the boiler or pressure vessel required to be inspected refuses to allow an inspection to be made or refuses to pay the required fee, the certificate of inspection shall be suspended by the commissioner until the owner or user complies with the requirements.

(3) If the owner or user operates a boiler or pressure vessel without possessing a valid certificate of inspection, the owner or user shall be subject to the penalties provided for in KRS 236.990.

(4) Certificates of inspection shall be located as required by KRS 236.120(1).

(5) Validity of certificates of inspection.

(a) A certificate of inspection issued in accordance with KRS 236.120 shall be valid until expiration unless a defect or condition affecting the safety of the boiler or pressure vessel is disclosed.

(b) A certificate issued for a boiler or pressure vessel inspected by a special boiler inspector shall be valid only if the boiler for which the certificate was issued continues to be insured by an authorized insurance company.

(6) Suspension of certificate of inspection. Certificates shall be suspended in accordance with KRS 236.120(3).

(7) Pressure vessel inspections. Pressure vessels shall be inspected upon installation and reinspected in accordance with this subsection.

(a) Pressure vessels exceeding 200 psi maximum allowable working pressure (MAWP) shall be inspected every five (5) years.

(b) Hot water storage tanks, sterilizers, and autoclaves shall be inspected every four (4) years.

(c) Pressure vessels for human occupancy and hyperbaric chambers shall be inspected annually.

(d) All pressure vessels shall be re-inspected at the time of repair, alteration, or relocation.

Section 2. Fees. (1)(a) Following an inspection by a boiler inspector or owner-user inspector, the owner or user of a boiler, pressure vessel, or pressure piping, unless exempt under KRS 236.060, shall pay to the department fees in accordance with this section.

(b) The fees for new installations of boilers, pressure vessels, or pressure piping and fees for repairs shall be in accordance with the fees listed in subsection (5) of this section and shall be submitted by the contractor prior to installation.

(2)(a) Shop inspections made by boiler inspectors for purposes of inspecting the fabrication of the vessel at the request of a boiler manufacturer, installer, engineering contractor, or owner shall be charged at the rates established in this subsection:

1. \$450 for one-half (1/2) day of four (4) hours or less;
2. \$600 for one (1) day of more than four (4) hours to eight (8) hours;
3. \$600 for any part of a day on Saturdays, Sundays or state holidays; and
4. Forty (40) dollars per hour for overtime in excess of eight (8) hours in any one (1) day, plus itemized expenses of mileage, lodging, meals, and incidentals.

(b) The fees established in this subsection shall not void regular fees for inspection and certificates of inspection when the boilers or pressure vessels are completed.

(3) Charges for inspection of second-hand equipment shall be at the rates established in subsection (2) of this section plus itemized charges for mileage, lodging, meals, and incidentals. These charges shall not void regular fees for inspection and certificates of inspection when the boilers or pressure vessels are installed.

(4) ASME and National Board inspections. Inspections of a manufacturing facility, at the request of the manufacturer, for the issuance of ASME or National Board Certificates of Authorization

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

shall be charged at the rates established in this subsection:

- (a) Initial inspection for ASME certificates – \$1,200;
- (b) Reviews for renewal of ASME certificates – \$950; and
- (c) Initial inspections and renewals for National Board R or V-R certificate – \$400.

(5) New installation inspections of pressure piping, boilers, and pressure vessels. Inspection of new installations of pressure piping, boilers, or pressure vessels shall be charged at the rates established in this subsection.

(a) The fees charged for inspection of each newly installed boiler or pressure vessel and each pressure piping system shall be based upon the total dollar value of each installation, either actual or estimated. It shall be the obligation of the installing contractor to supply this value, which shall include both labor and material costs. An exact figure does not need to be quoted or divulged to the boiler inspector or department, only a designation that the true value lies within certain limits as listed in the left column of the table established in this paragraph. The fees for all new installations of boilers, pressure vessels, or pressure piping and fees for repairs are listed in the right column of the table:

Amount in Dollars	Fee
\$2,000 or less	\$70
\$2,001 to \$10,000	\$130
\$10,001 to \$25,000	\$200
\$25,001 to \$50,000	\$250
\$50,001 to \$75,000	\$300
\$75,001 to \$100,000	\$410
\$100,001 to \$150,000	\$520
\$150,001 to \$200,000	\$630
\$200,001 to \$250,000	\$740
\$250,001 to \$300,000	\$850
\$300,001 to \$400,000	\$960
\$400,001 to \$500,000	\$1,350
\$500,001 to \$600,000	\$1,500
\$600,001 to \$700,000	\$1,650
\$700,001 and over	\$1,850

(b) The fee for an initial inspection of a pressure vessel required by Section 1(7) of this administrative regulation shall be twenty-five (25) dollars.

(c) The installing contractor, owner, or user shall request an inspection of a boiler and pressure piping at least seven (7) days in advance. If the inspection is not made within this time limit, the installation may proceed. Requests for inspection shall be made by electronic mail, letter, or telephone to the department.

(6) Inspection of nuclear installations. Nuclear installation inspections shall be charged in accordance with the fee schedule established in subsection (2) of this section or as agreed upon through contracts between the installer and the department.

(7) Hydrostatic tests. If hydrostatic testing is used to ascertain acceptability pursuant to KRS 236.110(3), an additional fee shall be charged by the department for witnessing the hydrostatic test. The additional fee shall be in accordance with the fee schedule established in subsection (2) of this section if it is necessary to make a special trip to witness the application of a hydrostatic test.

Section 3. Fees for Reinspection of Boilers and Pressure Vessels. (1) Fees for reinspection of power boilers shall be charged at the rates established in this subsection.

(a) INTERNAL INSPECTIONS OF POWER BOILERS	
Heating Surface (Square Feet)	Fee
100 or less	\$35
101 to 1,000	\$50
1,001 to 4,000	\$90
4,001 to 10,000	\$120
10,001 and over	\$200
(b) EXTERNAL INSPECTIONS OF POWER BOILERS	
Heating Surface (Square Feet)	Fee
100 or less	\$30
101 and over	\$35

(2) Fees for reinspection of heating boilers shall be charged at the rates established in this subsection.

Boilers with manway where	\$55
---------------------------	------

internal inspection required	
Other heating boilers	\$35
Hot water supply boilers	\$25
Miniature boilers	\$25

(3) The fee for the reinspection of a pressure vessel shall be twenty-five (25) dollars.

Section 4. Plan Review for Boiler and Pressure Vessel Installations. (1) Prior to the construction and installation of any boiler or pressure vessel, the installing contractor shall submit shop drawings and fees for the installation to the chief boiler inspector of the department. Submission of plans shall be reviewed and released for construction upon department approval.

(2) Fees for plan review shall be:

Heating Surface (Square Feet)	Fee
100 and under	\$30
101 to 1,000	\$55
1,001 to 4,000	\$75
4,001 to 10,000	\$100
10,001 and over	\$150
Pressure vessels	\$45

STEVE A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: September 14, 2017

FILED WITH LRC: September 14, 2017 at 4 p.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, November 13, 2017)

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

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2017-2019[Update to the 2015-2017] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2017-2019[Update to the 2015-2017] State Health Plan", November/October/July/January 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, November 13, 2017)

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

RELATES TO: KRS 218A.010(11)(9), 218A.202, 218A.240
STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), (17), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish and maintain an electronic system for monitoring Schedule II, III, IV, and V controlled substances[that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy]. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a) 1. Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(11)(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy that[which] has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(6) "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(7) "Practitioner" is defined by KRS 218A.010(39)(33).

(8) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

(9) "Suspected drug overdose" means an acute condition that:

(a) May include physical illness, coma, mania, or hysteria that is the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined; and

(b) Relates to injury, poisoning by, or other adverse effect of any substance corresponding to the following International Classification of Disease (ICD) version 10 (ICD-10) codes, or equivalent codes in the most recent version of the International Statistical Classification of Diseases and Related Health Problems:

1. T40;

2. T42; or

3. T43.

Section 2. Data Reporting. (1) A dispenser or a health facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances

specified in KRS 218A.202(3)(a) through (c)[and (b)].

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of the drug dispensed;

(d) Date of dispensing;

(e) Estimated days the supply of[day's supply] dispensed medication will last;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) Prescription[Serial] number assigned by the dispenser; and

(h) The Drug Enforcement Administration registration number of the dispenser.

(3)[(a) Prior to July 1, 2013, the data identified in subsection (2) of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

~~(b) Prior to July 1, 2013, a dispenser that dispenses a controlled substance for the direct administration of the controlled substance to or for a patient in a licensed health facility shall not be required to transmit the data identified in subsection (2) of this section.~~

~~(c) Effective July 1, 2013, The data identified in subsection (2) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.~~

(4)(a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or

2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (8) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Secure File Transfer Protocol;

(c) https protocol; or

(d) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the telecommunications format for controlled substances established by the Implementation Guide, ["]ASAP Standard for Prescription Monitoring Programs[Telecommunications Format for Controlled Substances], developed by the American Society for Automation in Pharmacy, Version 4.2[4.1], or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the telecommunications format for controlled substances established by the Implementation Guide, ["]ASAP Standard for Prescription Monitoring Programs[Telecommunications Format for Controlled Substances] shall report the data identified in subsection (2) of this section using an Internet accessible web portal designated by the cabinet.

(9) To meet the reporting requirement of KRS 218A.202(4), a hospital shall report to the cabinet all positive toxicology screens ordered[performed] by the hospital's emergency department to evaluate a patient's suspected drug overdose via the Kentucky Health Information Exchange.

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this

administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at www.chfs.ky.gov/KASPER.

(3) A request for a KASPER provider report made by a peace officer authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the ~~Request for~~ KASPER Report Request for ~~Law Enforcement and Licensure Boards~~, Form **DCB-20L [DCB-15L]**.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may query KASPER for a report on the decedent.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used in the Social Security field.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the number "000-00-0000" shall be used in the Social Security field.

(5) If a patient is an animal, the number "000-00-0000" shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall ~~have~~**be** authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER ~~according to the Office of Inspector General's retention schedule on file with~~**for a period of two (2) years plus the current year prior to its transfer to** the State Archives and Records Commission.

Section 8. Error Resolution. (1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(9)(f) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information is inaccurate. The patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

(a) Contact the dispenser who reported the information required by Section 2(2) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database within seven (7) calendar days of the request for the correction; and

(b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic that the corrected information has been transmitted.

(3) If a dispenser **identifies a KASPER system generated error, the dispenser shall notify the branch. Upon verification of the error, the branch shall:**

(a) maintains that information regarding the dispensing of

a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the [Drug Enforcement and Professional Practices] [branch] [(DEPPB)] **[to identify the source of an error in the KASPER report, and the cabinet shall]** Correct the information in the KASPER database; **and**

(b) (4) Upon correction of information in the KASPER database pursuant to subsection (3) of this section, cabinet staff shall] Notify the patient, patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

Section 10. Disclosure of Data or Report. (1) The cabinet shall only disclose data to the persons and entities authorized to receive that data under KRS 218A.202(7)(f).

(2) As a condition precedent to the disclosure of data or a report pursuant to KRS 218A.202(7)(f), a hospital or long-term care facility shall maintain, and provide upon request by the cabinet, a copy of the hospital or long-term care facility's policy for the management of KASPER data and reports, which:

(a) Describes the hospital or long-term care facility's internal procedures for educating the designated employee or employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(b) Describes the hospital or long-term care facility's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the Office of Inspector General.

(4)(a) An individual authorized to receive data under KRS 218A.202(7)(f) shall not provide the data to any other entity except as provided in KRS 218A.202(9)(f) and paragraph (b) of this subsection.

(b) In addition to the purposes authorized under KRS 218A.202(9)(f)(e), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS 218A.202(7)(f)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(5) A hospital or long-term care facility shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

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

(a) **"Implementation Guide, ASAP Standard for Prescription Monitoring Programs/Telecommunications Format for Controlled Substances"**, American Society for Automation in Pharmacy, Version 4.2, September 2011[4.1, November 2009]; and

(b) **"[Request for] KASPER Report Request for [Law Enforcement and Licensure Boards]"**, Form **DCB-20L, October 2017 [DCB-15L, February 2016]**[42/40].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General,

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, November 13, 2017)

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.

(3)(5) "ASTM" means the American Society for Testing and Materials[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.]

(4)(6) "Mitigation system" is defined by KRS 211.9101(21).

(5)(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.

(6)(8) "NRSB" means the National Radon Safety Board.

(7)(9) "NRSB" means the National Radon Safety Board.

(10) "Picocuries 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]
[(11) "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 control program[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) or 211.9111(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 control program[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 control program[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 Control Program[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[A description of the management and structure of the organization;

(e) 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;

(e) A statement of compliance with cabinet-approved[ANSI-AARST] standard operating procedures pursuant to Section 5(3) of this administrative regulation; and

(f)[(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;

(c)[(d)] A description of all types of radon mitigation methods performed and other related services offered;

(d)[(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;] and

(e)[(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[~~be~~]:

~~(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) 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 as low as reasonably achievable (ALARA).

(6) Prior to mitigation, educational material about radon levels shall be provided to the client.

~~[(7)]~~ 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 control program[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].

(8)[(7)] If a deviation from cabinet-approved standard operating procedures occurs, the radon 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 [244.944], 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)[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, exam, or standard operating procedure shall be cabinet-approved if issued by the:

(a) AARST;

(b) [ABIH];

(c) AIHA;

(d) ANSI;

(e) ASTM;

(d)[(f)] NRPP; or

(e)[(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 211.9140]

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 control program[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) or 211.9111(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)(e)(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)(f)(e)(b) of this administrative regulation; and

2. Be exempt from the continuing education requirements.

(b) A certified radon measurement contractor or radon mitigation contractor on inactive status may petition the cabinet for renewal of active certification. If a certified radon measurement contractor or radon mitigation 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 control[assurance] program plan; or

(d) Request from the cabinet.

(2) The report shall include the:

(a) ZIP Code or[off] 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: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(As Amended at ARRS, November 13, 2017)

902 KAR 100:180. Technologically Enhanced Naturally Occurring Radioactive Material related to oil and gas development.

RELATES TO: KRS 189.150, 211.842-211.990, 216B.050(22), Chapters 224 and 353, 40 C.F.R. Parts 144 - 147, 42 U.S.C. 1421 - 1443[401 - KAR Chapters 47 and 48, 902 KAR 100:010, 100:019, 100:021, 100:022, 100:040]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(a), 211.842, 211.844(1), 211.863(6), 211.865, 211.893(2)

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 protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to

operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.893(2) ~~authorizes~~**[directs]** the cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing technologically enhanced naturally occurring radioactive material (TENORM). This administrative regulation establishes radiation protection standards for the possession, use, transport, transfer, and disposal of TENORM related to oil and gas development.

Section 1. Definitions. (1) "Activity concentration" means the rate of disintegration (transformation) or decay of radioactive material per unit of dry mass.

(2) "Oil and gas development":

(a) Means the drilling, operation, and closure of a well permitted and regulated pursuant to KRS Chapter 353, including:

1. A stratigraphic test well;
2. An oil ~~or~~**[and]** gas production well;

3. A well drilled or used for enhanced recovery or for disposal of oil ~~or~~**[and]** gas-related wastes; or

4. A related production and storage facility; and

(b) Includes gathering lines, but does not include subsequent transmission or processing of produced oil or gas not permitted or regulated pursuant to KRS Chapter 353.

(3) "Technologically Enhanced Naturally Occurring Radioactive Material" or "TENORM" is defined by KRS 211.862(13).

(4) "Well operator" is defined by KRS 353.010(20).

Section 2. Applicability. (1) This administrative regulation shall apply to a person who receives, owns, possesses, uses, processes, transfers, transports, distributes, arranges for the disposal of, or disposes of TENORM with an activity concentration greater than five ~~and zero-tenths~~ (5.0) picocuries per gram of combined radium-226 (Ra-226) and radium-228 (Ra-228).

(2) This administrative regulation shall apply only to TENORM related to oil and gas development.

(3) Each person subject to this administrative regulation shall manage and dispose of waste containing TENORM:

(a) Pursuant to Section 6 of this administrative regulation; or

(b) In accordance with an alternate method authorized by the cabinet upon written request or upon the cabinet's initiative in accordance with this administrative regulation and administrative regulations of the Energy and Environment Cabinet.

(4) Exemptions to this administrative regulation are ~~established~~**[found]** in Section 3 and are not considered a hazard to public health based on scientific and health rationale.

Section 3. Exemptions. The following ~~shall be~~**[are]** exempt from the requirements of this administrative regulation:

(1) Background activity concentrations upon specific request and the written approval of the cabinet;

(2) Drill cuttings and associated residual pit fluids from wells permitted pursuant to KRS Chapter 353 and managed in accordance with the requirements of that chapter; and

(3) Water produced from or utilized during oil or gas well development or production operations, including produced water and water flowed back following hydraulic fracturing operations that is disposed of in injection wells that are regulated and permitted in accordance with KRS ~~353.590 through 353.593 and 353.992; 805 KAR 1:110; and, if applicable, the Safe Drinking Water Act, 42 U.S.C. 1421 through 1443 and 40 C.F.R. Parts 144 through 147, [Chapter 353 and, where applicable, the Safe Drinking Water Act]~~ and Underground Injection Control Program.

Section 4. Sample Collection and Analysis. (1) All sample collection pursuant to this section shall be conducted so as to be representative of the entire waste load or container.

(2) Sample collection and analysis of the TENORM-containing waste shall take place prior to disposal ~~as established in paragraphs (a) through (e) of this subsection~~**[in the following manner:]**

(a)1. At least five (5) representative samples taken randomly from within the load or container shall be composited into one (1) sample and analyzed; or

2. For tubing, a representative sample shall be taken every 500

feet~~;~~**]**

(b) Analysis of TENORM waste proposed to be transported off-site for management or disposal shall be conducted by a laboratory accredited by the National Environmental Laboratory Accreditation Conference to perform radiological analysis.

(c) Each sample analyzed by an accredited laboratory shall be analyzed for the activity concentration of combined Ra-226 and Ra-228;

(d) For TENORM waste being disposed of downhole pursuant to Section 6(4) of this administrative regulation, sample collection and analysis shall be performed:

1. Pursuant to ~~paragraphs (a) through (c)~~**[paragraph (a)-(c)]** of this subsection; or

2. At the election of the well operator, by measuring the highest on-contact radiation exposure rate or radiation dose rate reported in microrentgen per hour (μR/hr) or microrem per hour (μrem/hr) through the use of a portable radiation detector that is:

- a. Appropriate for the radiation being measured; and
- b. Calibrated at least annually.

(e) The cabinet may require additional testing if another progeny is considered to be of primary concern.

(3) For the purpose of determining disposal method pursuant to Section 6 of this administrative regulation, sample collection and analysis meeting the requirements of subsection (2) of this section may additionally occur after the waste has been prepared or treated for disposal as long as the waste is not treated beyond the minimum required for disposal.

Section 5. Transporting TENORM Waste for Management or Disposal. (1) TENORM waste being transported for management or disposal shall be:

(a) Accompanied by a waste profile or manifest document pursuant to Section 8 of this administrative regulation;

(b) Covered and contained during transportation in accordance with ~~general standards of the U.S. Department of Transportation and KAR Title 601/Kentucky Transportation Cabinet;~~ and

(c) Packaged or stabilized as needed to prevent dispersion during transportation or landfill placement.

(2) Other than TENORM wastes stored on-site prior to disposal in conjunction with an oil or gas operation permitted pursuant to KRS Chapter 353 and those materials awaiting return transportation following rejection at the disposal facility in accordance with Section 6(6)(c) of this administrative regulation, the storage or treatment of TENORM waste is allowed only if licensed pursuant to 902 KAR 100:040.

Section 6. Disposal of Waste. (1) TENORM waste with an activity concentration greater than five ~~and zero-tenths~~ (5.0) and less than or equal to 100 pCi/g of combined Ra-226 and Ra-228 shall be disposed in a:

(a) Landfill meeting the design and construction standards of a contained landfill as ~~established~~**[defined]** by the Energy and Environment Cabinet that:

1. Possesses a current permit demonstrating compliance with the requirements of KRS 224 and ~~401 KAR Chapters 47 and 48~~**[administrative regulations promulgated thereunder];** and

2. Ensures the disposal is in accordance with statutory provisions of KRS 224 and regulatory provisions of ~~401~~**[401]** KAR ~~Title 401~~ that apply specifically to the disposal of TENORM waste in such a facility;

(b) Well that is regulated and permitted for ~~such~~**[such]** disposal pursuant to the requirements of subsection (4) of this section; or

(c) Landfill meeting the requirements of subsection (2)(a) or (2)(b) of this section.

(2) TENORM waste with an activity concentration greater than 100 and less than or equal to 200 pCi/g of combined Ra-226 and Ra-228 shall be disposed of in a:

(a) Landfill located in Kentucky specifically permitted by the Energy and Environment Cabinet to accept ~~such~~**[such]** TENORM wastes for disposal or located in Illinois as specified under the terms and conditions of the Central Midwest Interstate Low-Level Radioactive Waste Compact pursuant to KRS 211.859;

(b) Licensed low-level radioactive waste disposal facility as ~~established in~~**[directed by]** 902 KAR 100:021; or

(c) Well that is regulated and permitted for ~~[such]~~ disposal pursuant to the requirements of subsection (4) of this section.

(3) TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 shall be disposed of in a:

(a) Licensed low-level radioactive waste disposal facility as established in~~[directed by]~~ 902 KAR 100:021; or

(b) Well that is regulated and permitted for ~~[such]~~ disposal pursuant to the requirements of subsection (4) of this section.

(4) The downhole disposal of TENORM waste into a well located on the same lease, pool, or unit from which the TENORM waste was generated shall be~~is~~ allowed if:

(a) The well is permitted by the Energy and Environment Cabinet;

(b) Disposal is done in accordance with 805 KAR 1:060~~[the requirements of the Energy and Environment Cabinet]~~; and

(c) The radioactivity is analyzed pursuant to Section 4(2)(d) of this administrative regulation and reported to and maintained by the Energy and Environment Cabinet.

(5)(a) TENORM waste imported from outside of Kentucky or Illinois shall not be~~is prohibited from being~~ disposed of in Kentucky pursuant to KRS 211.859.

(b) The disposal of TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 in a landfill in Kentucky shall be~~is~~ prohibited.

(6) Prohibited TENORM waste that is delivered to a landfill for disposal shall be rejected. The owner or operator of the landfill shall:

(a) Record the:

1. Source;
2. Amount;
3. Generator; and
4. Other identifying information about the rejected waste; and

(b) Notify the cabinet by telephone, fax, or electronic mail within one (1) business day of the rejection, impoundment, and quarantine of ~~the~~[such] material. Contact telephone numbers are established in 902 KAR 100:040, Section 15(3); and

(c) Impound and quarantine the waste load until the cabinet determination on the disposition of the waste ~~if~~[providing that] the impounding and quarantining of ~~the~~[such] waste by the owner or operator of the landfill shall not constitute storage ~~or~~nor cause the owner or operator of the landfill to become responsible under law for the further management or disposition of ~~the~~[such] waste.

(7) Records of disposal, including waste profiles and manifests, shall be maintained by the owner or operator of the landfill for thirty (30) years after closure of the facility.

Section 7. Material or Real Property Containing TENORM. (1) The transfer of TENORM not exempt pursuant to Section 3 shall be~~is~~ authorized if the equipment and facilities contaminated with TENORM shall~~are to~~ be used by the recipient for the same purpose.

(2) Transfers made pursuant to subsection (1) of this section do not relieve the person making the transfer from the responsibilities of assessing the extent of TENORM contamination or material present, informing the person receiving the TENORM of these assessments, and maintaining records required by this administrative regulation.

(3) The transfer of TENORM products not exempt in Section 3 shall be~~is~~ authorized provided the requirements of this section are met and the product is accompanied by a waste profile or manifest document pursuant to Section 8.

(4) The remediation of material contaminated with TENORM shall be performed only if licensed to do so pursuant to 902 KAR 100:040.

Section 8. Record Keeping Requirements. (1) A person in possession of TENORM waste with an activity concentration greater than five and zero-tenths (5.0) pCi/g and less than or equal to 100 pCi/g of combined Ra-226 and Ra-228 being transported for management or disposal shall maintain and provide to the off-site treatment or disposal facility receiving ~~[such]~~ waste a waste profile or manifest containing ~~[such]~~ information as required by KRS 224.43-335~~[the Energy and Environment Cabinet]~~.

(2) A person in possession of TENORM waste with an activity concentration greater than 100 pCi/g and less than or equal to 200 pCi/g of combined Ra-226 and Ra-228 being transported shall maintain a copy of the ~~[form RPS 180]~~ TENORM Manifest, form RPS 180~~[RPS 180]~~. The manifest shall contain the:

(a) Name and signature of any:

1. Generating facility owner or operator;
2. Transporter company; and
3. Receiving facility owner or operator;~~[f]~~

(b) Identity and business contact information of the accredited laboratory that analyzed the samples;

(c) Type, amount, activity concentration, and source of TENORM being transported; and

(d) Unique tracking number established by the generator.

(3) A person in possession of TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 activity concentration being transported shall maintain records in accordance with 902 KAR 100:021.

Section 9. Worker Training and Safety. (1) A landfill approved for the disposal of TENORM waste pursuant to Section 6(2) shall implement a worker training program and safety program to meet the requirements of 902 KAR 100:019.

(2)(a) A landfill permitted to accept TENORM waste pursuant to Section 6(2) shall monitor individuals for exposure to radiation and radioactive material as required by 902 KAR 100:019, Section 13, for at least two (2) years.

(b) Personnel dosimeters shall meet the requirements of 902 KAR 100:019, Section 12.

(c) If the average result is less than 200 millirems (2.0 mSv) per year, suspension of individual monitoring may be requested and approved in writing by the cabinet.

Section 10. Violations. (1) A violation of this administrative regulation shall be subject to KRS 211.869(1) and (3) and KRS 211.990(2) and (4).

(2) A violation of an Energy and Environment Cabinet regulation referenced in this administrative regulation shall not be subject to the provisions of KRS 211.869 or KRS 211.990.

Section 11. Incorporation by Reference. (1) Form RPS 180, "TENORM Manifest", 10/2017~~[7/2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CONNIE GAYLE WHITE, MD, Deputy Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, November 13, 2017)

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

RELATES TO: KRS 205.520, 205.622, 205.8451, 314.011, 369.101 – 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 455.410, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d – 1320d-8, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. Part 493, 42 U.S.C. 1396a, b, c, d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions relating to advanced practice registered nurse services covered by the Medicaid Program.

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

(2) "Common practice" means an arrangement through which a physician and an APRN jointly administer health care services.

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

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Enrollee" means a recipient who is enrolled with a managed care organization.

(6) "Face-to-face" means occurring:

(a) In person; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(7) "Federal financial participation" is defined by 42 C.F.R. 400.203.

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

(9) "Incidental" means that a medical procedure is:

(a) ~~Is~~^{Is} Performed at the same time as a primary procedure; and

(b) ~~Is~~^{Is} Clinically integral to the performance of the primary procedure.

(10) ~~"Injectable drug" means an injectable, infused, or inhaled drug or biological that:~~

(a) ~~Is not excluded as a non-covered immunization or vaccine;~~

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

(c) ~~Is a rebatable drug.~~

(11) ~~(14)~~⁽¹²⁾ "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(12) ~~(14)~~⁽¹²⁾ "Locum tenens APRN" means an APRN:

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

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

(13) ~~(14)~~⁽¹³⁾ "Locum tenens physician" means a substitute physician:

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

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

(14) ~~(14)~~⁽¹⁴⁾ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by ~~by~~ⁱⁿ 42 C.F.R. 438.2.

(15) ~~(15)~~⁽¹⁵⁾ "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) ~~(16)~~⁽¹⁶⁾ "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

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

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

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

(17) ~~"Physician administered drug" or "PAD" means any rebatable covered outpatient drug that is:~~

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(18) ~~"New patient" means a recipient who has not received professional services from the provider within the past three (3) years.~~

(19) ~~"Provider" is defined by KRS 205.8451(7)(8).~~

(20) ~~(19)~~⁽¹⁸⁾ "Provider group" means a group of at least:

(a) ~~two (2) individually licensed APRNs who:~~

(a) ~~(1)~~⁽¹⁾ Are enrolled with the Medicaid Program individually and as a group; and

(b) ~~Share the same Medicaid group provider number;~~ or

(b) ~~One (1) APRN and at least one (1) physician who:~~

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number.

(21) ~~(20)~~⁽¹⁹⁾ "Rebateable ~~Rebatable~~ drug" means a drug for which the ~~drug~~^{drug's} manufacturer has entered into and has in effect ~~or complied with~~ a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(22) ~~(21)~~⁽²⁰⁾ "Recipient" is defined by KRS 205.8451(9).

(23) ~~(22)~~⁽²¹⁾ "Timely filing" means receipt of a Medicaid claim by the department within:

(a) ~~Within~~^{Within} Twelve (12) months of the date the service was provided;

(b) ~~Within~~^{Within} Twelve (12) months of the date retroactive eligibility was established; or

(c) ~~Within~~^{Within} Six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation. (1) To participate in the Medicaid program as a provider, an APRN or provider group shall comply with:

(a) 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672; and

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

(2) A provider:

(a) Shall bill the:

1. Department rather than the recipient for a covered service;

or

2. Managed care organization in which the recipient is enrolled if the recipient is an enrollee;

(b) May bill the recipient for a service not covered by Medicaid if the provider informed the recipient of non-coverage prior to providing the service; and

(c) 1. Shall not bill the recipient for a service that is denied by the department on the basis of:

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

b. Incorrect billing procedures including incorrect bundling of services;

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

d. Failure to meet timely filing requirements; and

2. Shall not bill the enrollee for a service that is denied by the managed care organization in which the recipient is enrolled if the recipient is an enrollee on the basis of:

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

b. Incorrect billing procedures including incorrect bundling of services;

c. Failure to obtain prior authorization for the service if prior authorization is required by the managed care organization; or

d. Failure to meet timely filing requirements.

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

(b) Failure to return a payment to the department or managed

care organization in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

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

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

2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours from the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longer of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(6) If a provider fails to maintain a health record pursuant to subsection (4) or (5) of this section, the department shall:

(a) Not reimburse for any claim associated with the health record; or

(b) Recoup from the provider any payment made associated with the health record.

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

(8)(a) A service provided by an APRN to a recipient shall be substantiated by a health record[records] signed by the APRN that corresponds[which correspond] to the date and service reported on the claim submitted for payment to the:

1. Department if the claim is for a service to a recipient who is not an enrollee; or

2. Managed care organization in which the recipient is enrolled if the recipient is an enrollee.

(b) If rendering services to a recipient in a hospital, an APRN shall document in the health record of the hospitalized recipient that the APRN performed one (1) or more of the following:

1. A personal review of the recipient's medical history;
2. A physical examination;
3. A confirmation or revision of the recipient's diagnosis;
4. A visit with the recipient; or
5. A discharge service for the recipient.

Section 3. APRN Covered Services. (1)(a) An APRN covered service shall be:

1. A medically necessary[medically-necessary] service furnished by an APRN through face-to-face interaction between the APRN and the recipient except as established in paragraph (c) of this subsection; and

2. A service that[which] is:

a. Within the legal scope of practice of the APRN as specified in:

- (i) 201 KAR 20:057; and
- (ii) 201 KAR 20:059; and

b. Eligible for reimbursement by Kentucky Medicaid.

(b) Any service covered pursuant to 907 KAR 3:005 shall be covered under this administrative regulation if it meets the requirements established in paragraph (a) of this subsection.

(c) Face-to-face interaction between the APRN and recipient shall not be required for:

1. A radiology service;
2. An imaging service;
3. A pathology service;
4. An ultrasound study;
5. An echographic study;

6. An electrocardiogram;
7. An electromyogram;
8. An electroencephalogram;
9. A vascular study;
10. A telephone analysis of an emergency medical system or a cardiac pacemaker if provided under APRN direction;
11. A sleep disorder service;
12. A laboratory service; or
13. Any other service that is customarily performed without face-to-face interaction between the APRN and the recipient.

(2) The prescribing of drugs by an APRN shall be in accordance with 907 KAR 23:010[1:019].

(3) A covered delivery service provided in a:

(a) Hospital shall include:

1. Admission to the hospital;
2. Admission history;
3. Physical examination;
4. Anesthesia;
5. Management of uncomplicated labor;
6. Vaginal delivery; and
7. Postpartum care; or

(b) Freestanding birth center shall include:

1. Delivery services in accordance with 907 KAR 1:180, Section 3(3); and

2. Postnatal visits in accordance with 907 KAR 1:180, Section 3(4).

(4) An EPSDT screening service shall be covered if provided in compliance with the periodicity schedule established in 907 KAR 11:034.

(5) Behavioral health services established in 907 KAR 15:010 that are provided by an APRN or provider group that is the billing provider for the services shall be:

(a) Provided in accordance with 907 KAR 15:010; and

(b) Covered in accordance with 907 KAR 15:010.

(6) A drug listed on the Physician Administered Drug List shall be covered in accordance with 907 KAR 23:010[An injectable drug that is listed on the Physician Injectable Drug List and that is administered by an APRN or provider group shall be covered].

Section 4. Service Limitations and Exclusions. (1)(a) A limitation on a service provided by a physician in accordance with 907 KAR 3:005 shall apply to services covered under this administrative regulation.

(b) A service that is not covered pursuant to 907 KAR 3:005 shall not be covered under this administrative regulation.

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

(3)(a) Except as established in paragraph (b) of this subsection, coverage of a psychiatric service provided by an APRN shall be limited to four (4) psychiatric services per APRN, per recipient, per twelve (12) months.

(b) A service designated as a psychiatry service CPT code that is provided by an APRN with a specialty in psychiatry shall not be subject to the limit established in paragraph (a) of this subsection.

(4) The department shall not cover more than one (1) of the following evaluation and management services per recipient per provider per date of service:

- (a) A consultation service;
- (b) A critical care service;
- (c) An emergency department evaluation and management service;
- (d) A home evaluation and management service;
- (e) A hospital inpatient evaluation and management service;
- (f) A nursing facility service;
- (g) An office or other outpatient evaluation and management service; or
- (h) A preventive medicine service.

(5) Except for any cost sharing obligation pursuant to 907 KAR 1:604, a:

(a) Recipient shall not be liable for payment of any part of a Medicaid-covered service provided to the recipient; and

(b) Provider shall not bill or charge a recipient for any part of a Medicaid-covered service provided to the recipient.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(6)(a) In accordance with 42 C.F.R. 455.410, to prescribe medication, order a service for a recipient, or refer a recipient for a service, a provider shall be currently enrolled and participating in the Medicaid Program.

(b) The department shall not reimburse for a:

1. Prescription prescribed by a provider that is not currently:

a. Participating in the Medicaid Program pursuant to 907 KAR 1:671; and

b. Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; or

2. Service:

a. Ordered by a provider that is not currently:

(i) Participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(ii) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; or

b. Referred by a provider that is not currently:

(i) Participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(ii) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672.

Section 5. Prior Authorization Requirements. The prior authorization requirements established in 907 KAR 3:005 shall apply to services provided under this administrative regulation.

Section 6. Locum Tenens. The department shall cover services provided by a locum tenens APRN or locum tenens physician under this administrative regulation:

(1) If the service meets the requirements established in this administrative regulation; and

(2) In accordance with:

(a) 201 KAR 20:056; and

(b) 201 KAR 20:057.

Section 7. ~~[No]~~ Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program under 907 KAR 8:030, the department shall not reimburse for the same service provided to the same recipient on the same day by another provider enrolled with the Medicaid Program.

Section 8. Third Party Liability. A provider shall comply with KRS 205.622.

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

(2) A 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 10. Auditing Authority. The department or the

managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with the claim or health record.

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

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

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

Section 12. Appeal Rights. An appeal of a department decision regarding:

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

(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010. [Section 13. ~~Incorporation by Reference. (1) "Physicians Injectable Drug List", February 16, 2015, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:~~

~~(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, November 13, 2017)

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

RELATES TO: KRS 205.520, 314.011, 42 C.F.R. 438.2, 42 U.S.C. 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, 42 U.S.C. 1396a, b, c, d, 42 U.S.C. 447.200, EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program[method for determining amounts payable by the cabinet for a service provided by an advanced practice nurse practitioner (APRN)].

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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

(2) "Department" means the Department for Medicaid Services or its designated agent.

(3) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(4) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(5) "Provider group" means a group of **at least two (2) individually licensed APRNs who:**

(a) Are enrolled with the Medicaid Program individually and as a group; and

(b) Share the same Medicaid group provider number [more than one (1) individually licensed practitioners who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients].

(6) "Usual and customary charge" means the uniform amount the provider charges in the majority of cases for the service or procedure.

Section 2. Reimbursement. (1) The department's reimbursement under this administrative regulation shall be for a service or procedure:

(a) Covered pursuant to 907 KAR 1:102; and

(b) Provided by an APRN or APRN provider group that:

1. Meets the condition of participation requirements established in 907 KAR 1:102, Section 2; and

2. Is the billing provider for the service or procedure.

(2) Except as specified in subsection (3) [(2)] of this section or Section 3 of this administrative regulation, the department shall reimburse for a service or procedure that is covered pursuant to 907 KAR 1:102 at [reimbursement for a procedure shall be based on] the lesser of [the following]:

(a) The APRN's or APRN provider group's usual and customary [actual billed] charge for the service or procedure; or

(b) Seventy-five (75) percent of the amount reimbursable to a Medicaid participating physician for the same service or procedure pursuant to 907 KAR 3:010.

(3) The department's reimbursement for a behavioral health service covered pursuant to 907 KAR 15:010 that is provided by an APRN or APRN provider group that is the billing provider for the service shall be pursuant to 907 KAR 15:015 [(2) An APRN employed by a primary care center, federally-qualified health center, hospital, or comprehensive care center shall not be reimbursed directly for services provided in that setting while operating as an employee].

Section 3. Reimbursement Limitations. (1) The department shall reimburse an APRN or APRN provider group:

(a) A three (3) dollar and thirty (30) cent fee for each vaccine administered to a Medicaid recipient under the age of nineteen (19) [twenty-one (24)] up to a maximum of three (3) administrations per APRN, per recipient, per date of service; and

(b) The cost of each vaccine administered in accordance with paragraph (a) of this subsection, except as established in subsection (2) of this section.

(2) The department shall not reimburse [an APRN] for the cost of a vaccine that [which] is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(3) The department shall reimburse for a PAD in accordance with 907 KAR 23:020 [Injectable antibiotics, antineoplastic chemotherapy, and contraceptives in accordance with 907 KAR 1:102, Section 3(4), shall be reimbursed for an APRN at the lesser of:

(a) The actual billed charge; or

(b) The average wholesale price of the medication supply minus ten (10) percent].

(4) [Reimbursement for an orthopedic service requiring casting or splinting shall be restricted as follows:]

(a) Payment for a cast or splint applied in conjunction with a surgical procedure shall be included [inclusive] in the payment for [of] the surgical procedure. [;]

(b) Except as provided by paragraph (c) of this subsection, the department shall not reimburse [Payment shall not be made] for a cast or splint application for the same injury or condition within ninety (90) calendar days:

1. From [of] the date of the surgical service; or

2. If surgery is not performed, from initial application of the cast or splint. [and]

(c) The department shall reimburse for a second cast or splint applied for a subsequent injury or condition within ninety (90) calendar days of the first cast or splint application [shall be reimbursed] if the claim contains [accompanied by supporting] documentation demonstrating that the injury or condition occurred subsequent to the initial cast or splint application.

(d) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

1. A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

2. The initial cast or splint applied during or following the surgical procedure; and

3. A replacement cast or splint needed as a result of the surgical procedure if:

a. Provided within ninety (90) calendar days of the procedure by the same physician; and

b. Applied for the same injury or condition.

(5) Reimbursement for [of] an anesthesia service provided during a procedure shall include [be inclusive of the following elements]:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of intravenous fluids, [and] blood, or blood products incidental to the anesthesia or surgery;

(d) Postoperative pain management; and

(e) Monitoring services.

(6) The department's reimbursement [of a psychiatric service provided by an APRN shall be limited to four (4) psychiatric services per APRN, per recipient, per twelve (12) months.

(7) [Reimbursement] for a laboratory service provided in an office setting shall include the fee for collecting and analyzing a specimen.

(7) [(8)] A fee for a laboratory test requiring an arterial puncture or a venipuncture shall include the fee for the puncture. [(9) Reimbursement shall be limited to one (1) of the following evaluation and management services per recipient, per date of service:

(a) A consultation service;

(b) A critical care service;

(c) An emergency department evaluation and management service;

(d) A home evaluation and management service;

(e) A hospital inpatient evaluation and management service;

(f) A nursing facility service;

(g) An office or other outpatient evaluation and management service;

(h) A preventive medicine service; or

(i) A psychiatric or psychotherapy service.]

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

(1) 907 KAR 1:102; and

(2) This administrative regulation.

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

- (1) Receipt of federal financial participation for the coverage;
and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 6. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

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: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(As Amended at ARRS, November 13, 2017)

922 KAR 1:430. Child protective services in-home case planning and service delivery.

RELATES TO: KRS 600.010, 600.020, 605.130, 620.050(3), 620.072, 42 U.S.C. 620-629m, 1397-1397h, 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1) NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1)[194B.050(4)] requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Health and Family Services, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. This administrative regulation establishes cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency[;] in compliance with KRS 605.130.

Section 1. Definitions. (1) "Cabinet" is defined by[at] KRS 600.020(7)[(6)].

(2) "Case planning" means a process during which[where] the cabinet works with the family and other involved parties to identify conditions within a family, which may cause the threat of harm to a child and that need to be changed, and the services necessary to bring about familial changes in order to facilitate a child's safety and well being in the home environment.

(3) "Permanency goals" means the goals for permanency established by[are described at] 922 KAR 1:140, Section 4.[(4)] "Prevention plan" means a set of specific strategies and behaviors the family or individual intends to practice in order to prevent reoccurrence of an abusive or neglectful situation[;]

Section 2. In-Home Case Planning. (1) If the cabinet has determined that a child shall remain in the home, the cabinet shall review the results of the investigation[;] or[of the family in need of services] assessment conducted pursuant to 922 KAR 1:330[; Section 3(12)(a)1 and 2;] to include:

- (a) Reviewing the case history;
- (b) Initiating contact with a family;
- (c) Completing a case plan[P&P-1282, Family Case Plan;] with input from the family and community supports,[if parents agree] pursuant to 922 KAR 1:140, Sections 3 and 5; and

(d) Completing a Prevention Plan in accordance with 922 KAR 1:330[CPS prevention plan], if indicated, with input from family and community supports.

(2) ~~An[assessment]~~The Continuous Quality Assessment (CQA)~~[shall be completed or reviewed in accordance with 922 KAR 1:330, Section 3(9)]~~[(8)];

(3) ~~Another~~ assessment[The CQA] shall:

(a) Be completed at least every six (6) months prior to each periodic case plan; and

(b) Include:

1. Information gathered during contacts with the family and service providers;

2. Considerations of the level of cooperation and efforts made by the family members to reduce threat and address the high-risk behaviors that brought the family into contact with the department;

3. The family's progress towards case plan objectives; and
4. Further services or case actions necessary to achieve the case plan objectives and case closure.

(3)[(4)] The cabinet shall advise a family receiving in-home case planning and service delivery[A-DCBS-154, Protection and Permanency Service Appeal Request, shall be mailed or hand delivered to a family, advising them] of the right to a fair hearing in accordance with 922 KAR 1:320.

Section 3. Case[Service Delivery] Plan. (1) A case[If a case plan is required, a service delivery plan shall be provided as specified in a family's case plan. A service delivery] plan shall encompass:

- (a) Identified expectations of a family and the cabinet; and
- (b) Initiating linkage to community resources, including services to:

1. Address the high-risk behaviors of the family that brought the family to the attention of the cabinet; and

2. Meet the safety, health, and developmental needs of the child.

(2) If a child continues to reside in the home of a parent or guardian, the cabinet shall:

(a) Have monthly[face-to-face] contact with the family:

1. To evaluate the family's progress; and

2. In accordance with KRS 620.072; and

(b) Make a monthly in-home, face-to-face visit with the[family and] child to:

1.[(a)] Observe the interaction between parent, child, and siblings;

2.[(b)] Determine the appropriateness of interactions, such as the parent's ability to address the child's needs, attachments, and cooperation among caregivers;

3.[(c)] Determine if parenting skills need improvement; and

4.[(d)] Identify the protective capacity of the parent, including the parent's response to service provision and abilities to recognize the child's needs, control impulses, and express positive attachment to the child.

(3) If the home environment was indicated as an issue in the case plan, an in-home visit to assess the home shall be conducted.

Section 4. Case Closure and Aftercare Planning. (1) A new assessment in accordance with Section 2(2) of this administrative regulation[CQA] shall be completed before an in-home case is closed.

(2) The decision to close a[~~child protective services assessment or~~] case shall be:

(a) Based on documentation that the original factors resulting in abuse, neglect, or dependency, or the risk of the abuse, neglect or dependency, has been resolved to the extent that the parent or guardian is able to:

1.[(a)] Protect the child; and

2.[(b)] Meet the needs of the child; and

(b) Reviewed and approved by the cabinet staff's supervisor or designee.

(3) Consideration for closure of a child protective service case shall[~~may~~] occur if the following conditions are met:

(a) The child is no longer in need of protection; and

(b) The case planning or permanency goals have been

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

achieved.

(4) The family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) ~~Advised~~~~[Given a DCBS-154, Protection and Permanency Service Appeal Request, in person or by certified mail, advising]~~ of the right to a fair hearing in ~~accordance~~~~[compliance]~~ with 922 KAR 1:320~~[, Section 2]~~.

(5) If it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop an aftercare plan in accordance with 922 KAR 1:330 by:

(a) Linking the family to community resources;

(b) Continuing preventative measures; and

(c) Instructing the family in how to use the aftercare plan.

(6) The focus of the aftercare plan shall be to prevent a reoccurrence of child abuse, neglect, or dependency.~~[Section 5. Incorporation by Reference. (1) "Prevention Plan", edition 11/00, is incorporated by reference.~~

~~(2) This material made 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: October 19, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, November 13, 2017)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165~~(6)~~~~(5)~~, 61.876, 160.151, 160.380, 194A.380-194A.383, 199.466, 199.896(19), 199.8982(1)(a), 403.352, 600.020(1), ~~(40), (61), (62)~~~~(54), (55)~~, 620.050~~(5)~~, 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f~~(2)(A)(viii), (ix), (x)]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services~~[secretary]~~ to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2006 Ky. Acts ch. 252 Part 1, H.10(3) authorizes the secretary to promulgate administrative regulations necessary to prescribe criminal background investigation fee amounts. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Child fatality" is defined by KRS 211.684.

(4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(5) "Sexual abuse" is defined by KRS 600.020~~(61)~~~~(54)~~.

~~(6)~~~~(3)~~ "Sexual exploitation" is defined by KRS 600.020~~(62)~~~~(55)~~.

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

a. 922 KAR 1:480;

b. 922 KAR 1:320; or

c. 922 KAR 1:330, Section 11~~[140]~~; or

2. Whose substantiated incident was upheld upon appeal.

(2) Each name shall:

(a) Remain on the central registry for a period of at least seven (7) years; and

(b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:

a. Sexual abuse or sexual exploitation of a child;

b. A child fatality related to abuse or neglect;

c. A near fatality related to abuse or neglect~~[A criminal conviction related to child abuse or neglect;~~

d. A civil judicial determination related to child abuse or neglect; or

d.[e.] Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490~~[, regarding foster or adoptive services]~~.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x)~~[5106a(b)(2)(A)(viii), (ix), and (x)]~~.

Section 3. Procedure for Requesting a Central Registry Check.

(1) If information from the central registry is required by law, a request for a central registry check may be made by an:

(a) Individual;

(b) Organization; or

(c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

(a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and

(b)1. Applies for initial licensure;

2. Is hired by, or volunteers with, an entity required by law to obtain information contained in the central registry; or

3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made:

(a) By submitting to the cabinet:

1.a.(a)] A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or Title 922 KAR Chapter 2; or

b. A completed~~[form,]~~ DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

(i)[1-] The date of employment of an individual required by law to submit to a central registry check; or

(ii)[2-] A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and

2.[(b)] A nonrefundable fee of ten (10) dollars:

[1-]a.(i) Submitted by check or money order; and

(ii)[b-] Made payable to the Kentucky State Treasurer; or

b.[2-] Made available through a prepaid account established

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

with the cabinet; or

(b) Through another cabinet system, such as the Kentucky National Background Check Program established in accordance with 906 KAR 1:190.

(5) A state requesting a child abuse or neglect check from the cabinet[Kentucky] as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 4.

Section 4. Administrative Review. (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.

(2) An individual subject to administrative review in accordance with this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-156, Central Registry Check," 1/18[7/17]; and

(b) "DCC-374, Child Care Central Registry Check," 11/13/17/1/18[7/17] [edition 02/08, is incorporated by reference].

(2)[(3)](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, 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: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, November 13, 2017)

922 KAR 5:040. Standards for state-funded domestic violence shelters.

RELATES TO: KRS 45.313, 61.870-61.884, 194A.060, 194A.550, 198B.050, 205.455(4), 209.020(2), 209.030(2), (7), 209.140, Chapter 209A, 211.350-211.380, 403.720(1), [620.030(2),] 620.050, 45 C.F.R. 74, 92, 42 U.S.C. 10401-10420

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1); 209A.030(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations to effect the purposes of KRS Chapter 209 governing[the] protective services to adults. KRS 209A.045(2) requires the cabinet to designate one (1) nonprofit corporation in each area development district to serve as the primary service provider and regional planning authority for domestic violence shelter, crisis, and advocacy services in the district in which the designated provider is located[209A.030(1)—authorizes the secretary to promulgate administrative regulations to effect the purposes of KRS Chapter 209A governing the protective services to victims of domestic violence]. This administrative regulation establishes performance standards for qualifying applicants for state funds related to domestic violence shelters.

Section 1. Definitions. (1) "Agency" means a private or public nonprofit incorporated organization, or organization in the process of obtaining nonprofit status:

(a) That has the capacity to provide domestic violence shelter and related services to a client; and

(b) With whom the cabinet or its designee contracts for services.

(2) "Cabinet" is defined by KRS 209.020(2) and 209A.020(1)[means Cabinet for Health and Family Services].

(3) "Client" means a:

(a)[Domestic violence] Victim as defined by KRS 209A.020(6); and

(b) Dependent child of the[domestic violence] victim.

(4) "Dating violence and abuse" is defined by KRS 209A.020(2)[means an act by an individual that is:

(a) Against another individual with whom that person has or has had a dating relationship; and

(b)1. Intended to result in:

a. Physical harm;

b. Bodily injury;

c. Assault; or

2. A threat that reasonably places the individual in fear of:

a. Imminent physical harm;

b. Bodily injury;

c. Assault; or

d. Sexual assault].

(5) "Director" means an individual responsible for the administration of the domestic violence shelter and related services.

(6) "District" is defined by KRS 205.455(4).

(7) "Domestic violence and abuse" is defined by KRS 209A.020(3)[403.720(1)].

(8) "Domestic violence shelter" means a program which provides a client:

(a) A safe place to stay; and

(b) Related services including:

1. Counseling;

2. Advocacy;

3. Food; and

4. Information and referral services.

(9) "Governing board" means a legally-constituted group of individuals whose function is to oversee operations of an agency providing domestic violence shelter.

(10) "Professional" is defined by KRS 209A.020(5).

(11) "Reportable incidents" means an occurrence that would require the director of the domestic violence shelter to make a report of the incident to the program's governing board for liability reasons.

(12) "Victim" is defined by KRS 209A.020(6).

(13)[(14)] "Volunteer" means a person who:

(a) Is either third-party funded or who is donating free service time; and

(b) Works directly in the domestic violence shelter or is performing a related service at the request of the director.

Section 2. Management. (1)(a) Each agency shall be managed by a governing board constituted to allow broad community participation in its activities.

(b) The governing board shall:

1. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law, including KRS 61.870 to 61.884, 209.030(2)[,] and (7), 209.140, Chapter 209A, and 45 C.F.R. Parts 74 and 92, where applicable;

2. Develop written personnel policy and procedures including:

a. Job classifications;

b. Specifications;

c. A compensation plan;

d. Attendance and leave policies;

e. Fringe benefits;

f. Affirmative action;

g. Personnel grievance procedures; and

h. Hiring and firing practices, including lay-off and disciplinary procedures;

3. Adopt written bylaws, including:

a. The purpose of the agency;

b. Number of members;

c. Qualifications for board memberships;

d. Composition;

- e. The method of selecting members;
- f. Terms of members;
- g. Officers and duties;
- h. Method of electing officers and chairpersons;
- i. Standing committees;
- j. Provision for approval of programs and budgets;
- k. The frequency of board meetings and attendance requirements; and

l. Provision for official record of meetings and action taken; and

4. Be responsible for ensuring that all reports, records, or information deemed necessary to determine fiscal, administrative and programmatic effectiveness are submitted to the cabinet or its designee.

(2)(a) A domestic violence shelter shall create an advisory board for the purpose of studying and recommending functions to the governing board if the governing board provides no direct oversight to the domestic violence shelter.

(b) The governing board shall:

1. Not delegate the responsibility of the final approval, responsibility, accountability, or direction of agency policy to the advisory board; and

2. Retain responsibility for the functions specified in subsection (1) of this section.

(3) Board meetings shall be conducted in compliance with the most current version of "Robert's[Roberts] Rules of Order".

(4) The governing board shall make a copy of personnel policy and procedures available to staff, volunteers, and the cabinet or its designee.

(5) The governing board and advisory board, if appropriate, shall:

(a) Forward the official minutes of each meeting within thirty (30) days of approval to:

- 1. Each member of the board; and
- 2. The cabinet or its designee; and

(b) Follow the guidelines in the most current version of "Robert's Rules of Order".

(6) If the agency is a subsidiary of a larger entity, the provisions of subsections (1) through (5) of this section shall apply to the larger entity.

Section 3. Staff. (1)(a) An agency's governing board shall appoint one (1) staff person as a domestic violence shelter director.

(b) The director shall:

1. Have responsibility for supervision of the duties and activities of staff and volunteers;

2. Coordinate domestic violence shelter and related services;

3. Fulfill the duties as required by the governing and advisory board; and

4. Report directly to the board on domestic violence program activities.

(2) The agency shall:

(a) Maintain and assure the provision of competent staff to provide services at the domestic violence shelter as follows:

1. Volunteers shall be under the control and direction of the director even though they are not paid staff; and

2. Staff shall:

a. Be at least eighteen (18) years of age;

b. Have education, training, or experience to perform their particular job;

c. Have a willingness to work with others, including clients coping with multiple issues;

d. Be knowledgeable in domestic violence and abuse issues; and

e. Be knowledgeable in dating violence and abuse issues;

(b) Submit to the cabinet or its designee a staffing pattern indicating:

1. Areas of responsibility; and

2. Lines of authority and supervision;

(c) Provide and maintain a record of orientation and in-service training for staff and volunteers responsible for service delivery;

(d) Implement a system to assure compliance with:

1. Affirmative action standards; and

2. Equal opportunity employment standards;

(e) Provide a system for hearing and resolving grievances of

staff and volunteers; and

(f) Provide cabinet-approved training:

1. As governed by KRS 194A.550 to all full and part-time staff and volunteers having direct contact with clients; and

2. To include initial training courses and continuing education courses to be completed at least once every two (2) years.

Section 4. Physical Facilities. (1) The domestic violence shelter shall:

(a) Comply with applicable local, state, and federal building, fire, safety, and health codes relating to construction, sanitation, and building maintenance, including:

1. KRS 45.313;

2. 815 KAR 7:120;

3. 815 KAR 7:125;

4. 815 KAR 10:060;

5. KRS 198B.050; and

6. KRS 211.350 to 211.380; ~~and~~;

(b) Be:

1. Of sound construction;

2. Suitable for residential use;

3. Dry; and

4. Adequately heated, ventilated, and lighted; and

(c) Have:

1. Windows, doors, stoves, heaters, furnaces, pipes, and ventilating fans protected;

2. Screening provided for windows and doors unless air-conditioned;

3. Floors free from splinters and easily cleaned; and

4. Gas heaters and stoves properly ventilated.

(2) The domestic violence shelter shall provide a recreation area with comfortable furnishings in sufficient quantity to accommodate the number of children and adults receiving services.

(3) Bedrooms in a domestic violence shelter shall:

(a) Be equipped with a bed or other age- and developmentally appropriate sleeping arrangement ~~[for each client,] of adequate size for each client, with suitable springs, mattress, pillow, and bedding~~; and

(b) Have ~~[adequate closet space and individual drawer] space for each client's belongings, including clothing.~~

(4) The domestic violence shelter and grounds shall be well maintained.

(5) Each domestic violence shelter shall maintain a security system to provide for the physical safety of the client.

Section 5. Medical and Dental. The domestic violence shelter shall assure that access to emergency medical and dental services are available within the community or within close proximity.

Section 6. Meals. The domestic violence shelter shall provide a client with three (3) meals per day, which shall consist of at least three (3) of the following five (5) basic food groups:

(1) Grains;

(2) Vegetables;

(3) Fruits;

(4) Dairy products; and

(5) Meat and beans.

Section 7. Services. (1) The domestic violence shelter shall maintain and provide services on a continuing basis and for as many hours as are necessary to meet the needs of an eligible person.

(2) Staff of the domestic violence shelter shall apprise a client of resources available from:

(a) The domestic violence shelter; and

(b) The community.

(3) Upon a client's entrance into the domestic violence shelter, or if a client is receiving a domestic violence and abuse or dating violence and abuse related service, domestic violence shelter staff shall obtain and record in a client case record the following minimal information:

(a) Name, date of birth, sex, address, marital status;

(b) Name and date of birth of an accompanying dependent;

and

(c) Identification of reason for intake.

(4) Upon a client's entrance into the domestic violence shelter, or if a client is receiving a domestic violence related service, domestic violence shelter staff shall obtain and record the following information in a client case record, if observed or needed:

(a) Identification of physical injury;

(b) Medical attention provided; and

(c) Identification of physical condition or ailment, which may impact services to be offered the client.

(5) ~~[(a) Immediately following the gathering of the information required in subsections (3) and (4) of this section,]~~ Domestic violence shelter staff shall report ~~[the]~~ information;

(a) To law enforcement, upon request of the victim, in accordance with KRS 209A.100; and

(b) Concerning known or suspected child abuse, neglect, or dependency or abuse, neglect, or exploitation of a vulnerable adult to the [offices of the] cabinet [located within the county where the domestic violence shelter exists] in accordance with KRS 209A.110(2) and (3). [(b) This report shall constitute compliance with the provisions of KRS 620.030(2), 209.030(2), and 209A.030(3) and (4).]

(6) Upon completion of the gathering of information as required in subsections (3) and (4) of this section, domestic violence shelter staff shall develop a service plan:

(a) For each client; and

(b) To establish a summary of services needed by the client and available within the domestic violence shelter and community.

(7) Domestic violence shelter staff shall document and maintain in the client's case record any:

(a) Referral of the client for services outside the domestic violence shelter; and

(b) Service coordination with other agencies.

(8) The domestic violence shelter shall:

(a) Offer Daily program activities with emphasis upon each client's physical, intellectual, and social needs;

(b) Have and enforce a policy, which prohibits possession of weapons, alcohol, or nonprescribed drugs while in the shelter;

(c) Provide a locked cabinet for client medication storage;

(d) Develop and implement procedures to provide for the movement to more appropriate accommodations for those clients who:

1. Present a danger to self or others; or

2. Refuse to comply with domestic violence shelter rules governing the safety of staff and clients;

(e) Establish written procedures to be given to each client upon initial contact describing:

1. The services to be rendered; and

2. A method for handling client complaints including:

a. An opportunity for the client to have access to the cabinet's grievance procedure for review in accordance with 922 KAR 1:320, Section 10[8]; and

b. The cabinet's access to client records in the possession of each domestic violence shelter for review upon the filing of a service complaint by the client;

(f) Assure that services are available to clients in the area development district in which the agency is located;

(g) Accept referrals on a statewide basis, if space is available;

(h) Cooperate with other domestic violence agencies on a statewide basis;

(i) Develop and implement procedures for emergency and temporary domestic violence shelter closure;

(j) Maintain a record of reportable incidents involving a client and forward a copy of the incident report to the cabinet or its designee; and

(k) Develop and implement a plan for the provision of outreach services in counties of the area development district in which it is located.

(9)(a) Unless conditions specified in paragraph (b) of this subsection are met, domestic violence shelter staff shall not dispense nor administer medication, but shall allow each client to take their own medication as prescribed.

(b) Domestic violence shelter staff may dispense or administer emergency medication to a client if:

1. The domestic violence shelter staff has received training on the emergency medication;

2. Emergency medication may be necessary to save a client's life; and

3. Measures are taken to prevent unauthorized access to the emergency medication by a client in the domestic violence shelter.

(10) A domestic violence shelter shall make educational materials available to professionals in accordance with KRS 209A.130.

Section 8. Records. (1) A case record shall be:

(a) Maintained on each client served by the domestic violence shelter during the time that the client is receiving services;

(b) Strictly confidential; and

(c) Shared only in accordance with KRS 209A.070.

(2) Records of the cabinet or its designee in the possession of an agency are strictly confidential and shall be shared with other individuals or organizations:

(a) Only as provided in KRS 209.140, 194A.060, and 620.050; and

(b) With the prior written permission of the cabinet.

(3) The cabinet shall have access to the agency property and to records of services provided, including agency financial and client case records for the purpose of auditing and monitoring.

(4) Domestic violence shelters shall keep client case records for six (6) years after the last day of service.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: August 30, 2017

FILED WITH LRC: September 7, 2017 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, November 13, 2017)**

922 KAR 5:090. General adult services.

RELATES TO: KRS Chapter 209, 209A.020(6)[209.020-(4), (6), (7), (8), (15), 210.290], 403.720(2), 42 U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.035[~~EQ~~ 98-734]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.035 requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish criteria for general adult services. This administrative regulation establishes[the] general adult services to the extent funds are available[program].

Section 1. Definitions. (1) "Abuse" is defined by[at] KRS 209.020(8)(7).

(2) "Adult" is defined by[at] KRS 209.020(4).

(3) "Alternate care" means a level of care licensed by the cabinet as follows:

(a) Family care home in accordance with 902 KAR 20:041;

(b) Intermediate care facility in accordance with 902 KAR 20:051;

(c) Intermediate care facility for individuals with an intellectual disability as defined by 907 KAR 1:022;

(d) Nursing facility as defined by 907 KAR 1:022;

(e) Personal care home as defined by KRS 216.750(2); and

(f) Skilled nursing facility as defined by 907 KAR 1:022 as "high

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

intensity nursing care service".

(4) "Cabinet" is defined by KRS 209.020(2)[means the Cabinet for Health and Family Services].

(5)[(4)] "Caretaker" is defined by[at] KRS 209.020(6).

(6)[(5)] "Exploitation" is defined by[at] KRS 209.020(9)[(8)].

(7)[(6)] "Family member" is defined by[at] KRS 403.720(2).

(8)[(7)] "General adult services" means a voluntary preventive service aimed at[assisting]:

(a) Assisting an adult to attain and function at the adult's[his] highest level of self-sufficiency and autonomy; and

(b)[It] Maintaining the adult in the community.

(9)[(8)] "Neglect" is defined by[at] KRS 209.020(16)[(15)].

Section 2. Criteria for Intake and Assessment. (1) If a cabinet[social service] worker and the adult agree, an individual eighteen (18) years of age or older shall be eligible for general adult services if the individual:

(a)[If he] Is:

1. Mentally or physically dysfunctional and not in an abuse, neglect, or exploitation situation; and

2. Requesting the service or has directed the request for the service[in a situation where service is requested at the direction of an individual] through another individual or agency;

(b) Is a victim as defined by KRS 209A.020(6)[If an allegation of abuse, neglect, or exploitation is made and the alleged perpetrator is a:

1. Former spouse;

2. Former cohabiting partner; or

3. Partner with a child in common]; or

(c)[If he] Requests a transitioning service from out-of-home care within twelve (12) months of release from the cabinet's commitment.

(2) An individual sixty-five (65) years of age or older shall be eligible for general adult services if the individual[he] is:

(a) Not mentally or physically dysfunctional; and

(b) Allegedly being abused, neglected, or exploited by a:

1. Family member;

2. Household member; or

3. Caretaker.

Section 3. Time Frame. An adult services assessment shall be:

(1) [Be]Initiated within three (3) working days of receipt of the request for services; and

(2) Completed[Include completion of the Adult Narrative/Investigation/Assessment form] within forty-five (45) working days of initiation unless an extension is granted by the designated cabinet staff in a supervisory role for good cause, such as workload, pending records or collateral contact, or necessary medical evaluation.

Section 4. Service Provision[Tracking information on general adult services shall be maintained by the cabinet for administrative purposes.

Section 5]. Appropriate and necessary service provision shall include:

(1) Information and referral;

(2) [The]Assessment; and

(3) Supportive and on-going services[including] that, if required by the circumstances, include:

(a) Services focusing on prevention;

(b) Social work counseling;[and]

(c) Arranging transportation; or

(d) Placement and movement in accordance with Section 5 of this administrative regulation.

Section 5. Placement and Movement. (1) Except under a condition pursuant to KRS Chapter 209 or 922 KAR 5:070, the cabinet shall respond to a request for placement and movement service, but shall not make the decision to place or move an adult.

(2) A cabinet worker shall assist an adult in locating and assisting in placement and movement, if:

(a) The request for placement and movement service was made by one (1) of the following:

1. The adult in need of services;

2. The guardian of the adult in need of services;

3. The holder of a durable power of attorney for the adult in need of services;

4. The facility in which the adult in need of services is being treated if no other person is available and willing to assist;

5. Another state agency; or

6. A Court order;

(b) The adult in need of services has not been adjudicated mentally disabled;

(c) The adult in need of services agrees to the placement and movement service; and

(d) All other options have been explored and rejected.

(3) A cabinet worker shall:

(a) Assist a Medicaid recipient in locating placement or assistance in placement and movement; and

(b) Consider every available community resource that may assist the adult to remain at home or return home during the placement and movement process.

(4) A request for a placement and movement service may result from a:

(a) Protective services investigation in accordance with 922 KAR 5:070;

(b) Change in level of care;

(c) Normal movement into or out of an alternate care facility;

(d) Dissatisfaction of a resident; or

(e) Closure of an alternate care facility.

Section 6. Tracking information on general adult services shall be maintained by the cabinet for administrative purposes.[Incorporation by Reference. (1) The Adult Narrative/Investigation/Assessment Form, edition 11/99, is incorporated by reference.

(2) This material may be inspected, copied, or obtained 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 30, 2017

FILED WITH LRC: September 7, 2017 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amended After Comments)

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) Make available for board inspection, records of providing third-party logistics services involving prescription drugs, if such records are maintained; and~~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 form may be obtained, inspected, or copied, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, 8:00 a.m. to 4:30 p.m. Monday through Friday.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: November 8, 2017

FILED WITH LRC: November 9, 2017 at 2 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.

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: Third-party logistics providers will need to make records available, if they exist.

(b) The necessity of the amendment to this administrative regulation: Third-party logistics providers are not required to maintain particular records, but they need to make available to the board the records they maintain that pertain to prescription drugs.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized by KRS 315.4102-315.4110 to establish requirements for conducting business as a third-party logistics provider.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the records that must be available to the board.

(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: A third-party logistics provider will have to make records pertaining to prescription drugs available, if they exist.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost money to provide records, if they exist.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Third-party logistics providers will be compliant with the requirement that they produce records, if they exist.

(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 from 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 from 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 Kentucky Board of Nursing (Amended After Comments)

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 314.011, 314.042; Public Law 114-198

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131

authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" is defined in KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe Buprenorphine **for Opioid Use Disorder** unless that APRN possesses the minimum qualifications established in this section. (1) The APRN shall obtain and maintain in good standing a **DATA 2000** waiver and registration as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder.

(2) The APRN shall be a DEA-registered prescriber of Buprenorphine and shall have obtained medication assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) **sponsored[approved]** course.

(3) Only an APRN designated nurse practitioner may prescribe Buprenorphine.

(4) The APRN shall provide to the board a copy of the DEA **Controlled Substance Registration Certificate[waiver registration]** as required by 201 KAR 20:057, Section 6(4).

(5) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of Buprenorphine. This shall include the maximum number of patients, which may be seen by the APRN each year and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder. (1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with Opioid Use Disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with Opioid Use Disorder, except:

(a) To a pregnant patient, as set out in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an implant-delivered or injectable treatment administered in an APRN's office or other healthcare facility.

(3)(a) Except as provided in paragraph (b) of this subsection, Buprenorphine shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician **certified in addiction medicine or psychiatry as required by 201 KAR 9:270** or an APRN who is certified in addiction therapy **by the:**

1. Addictions Nursing Certification Board;

2. American Academy of Health Care Providers in the Addictive Disorders; or

3. National Certification Commission for Addiction Professionals; or a psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe Buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes Buprenorphine for supervised withdrawal or for the treatment of Opioid Use Disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall at a minimum include:

- a. The patient's history of present illness;
- b. The patient's history of drug use;
- c. The patient's social and family history;
- d. The patient's medical and psychiatric histories;
- e. A physical examination of the patient;

f. Appropriate laboratory tests, which may include a complete blood count (CBC), a **comprehensive quantitative** drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology; and

g. An evaluation by a mental health provider with expertise in addiction and compliance with the recommendations of the evaluator.

2. Obtain the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records.

a. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

3. Obtain and review a KASPER or other prescription drug monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with Buprenorphine to the patient.

5. Obtain written informed consent from the patient for treatment.

6. Discuss and document the patient's treatment with the patient's other providers;**[and]**

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; **and**

8. Develop a treatment plan that incorporates objective behavior modification including counseling or a twelve (12) step program for the duration of the treatment.

(b) 1. Prior to initiating treatment, the APRN shall require that the patient first submit to a pregnancy test and the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2. An APRN shall not prescribe Buprenorphine to a patient who is pregnant or breastfeeding unless the APRN first obtains and documents consultation for an opinion as to whether the potential benefit of Buprenorphine use outweighs the potential risk of use.

3. The consultation shall be obtained from a physician or an APRN **as established in subsection (3)(a) of this section****[who is certified in addiction therapy]**.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine, the APRN shall comply with the following requirement:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The APRN shall document the presence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse, the APRN shall:

1. Document the previous history of withdrawal.

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine, the APRN shall prescribe to the patient an amount of Buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal.

2. Does not produce opiate sedation

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit of twenty-four (24) milligrams per day.

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall see the patient at least weekly for the first two (2) months.

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the APRN shall see the patient at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen only by the APRN at least once every three (3) months. The APRN shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) The APRN shall review compliance with the recommendations of the treatment plan, including review of KASPER or other PDMP reports and drug screens to help guide the treatment plan at each visit.

1. The APRN shall incorporate those findings into the treatment plan to support the continuation or modification of treatment and shall accurately document the same in the patient record.

2. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and shall be coupled with a pill count. At least one (1) of those two (2) shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall, at a minimum, screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, alcohol, and cocaine.

c. If a drug screen indicates the presence of any of the drugs screened, the APRN shall incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment and shall document in the patient record.

d. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment.

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams Buprenorphine generic tablet per day, then the APRN shall refer the patient for evaluation by a physician or an APRN as established in subsection (3)(a) of this section [who is certified in addiction therapy] for an opinion as to whether continued treatment and dosage is appropriate and shall document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which:

1. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

2. If the APRN determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, the APRN shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies and require the patient to provide evidence to the APRN of having so reported.

Section 4. Continuing education. An APRN who has obtained a waiver and registration as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder shall complete the one and one-half (1 1/2) contact hours of continuing education required annually by 201 KAR 20:215, Section 5(1)(b) in addition disorders Amended After Comments of a New Administrative Regulation

LEWIS PERKINS, President

APPROVED BY AGENCY: September 12, 2017

FILED WITH LRC: November 13, 2017 at 9 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for APRNs who are authorized to prescribe Buprenorphine (also known as Suboxone) for the treatment of addiction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the federal government has authorized APRNs who meet federal requirements to prescribe this medication.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the federal law by setting standards.

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

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

(a) How the amendment will change this existing administrative

regulation:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs who have been authorized by the federal government to prescribe this medication, approximately 24.

(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 APRNs will have to comply with these standards.

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

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

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

(a) Initially: There is no additional cost.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:

- (a) The Free Application for Federal Student Aid (FAFSA); and
- (b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program as set forth in 11 KAR 5:200;

- (a) The Free Application for Federal Student Aid (FAFSA); and
- (b) The Go Higher Grant Program Application;

(7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application; and

(8) For the Kentucky Coal County College Completion Scholarship Program as set forth in 11 KAR 20:020:

- (a) The Free Application for Federal Student Aid (FAFSA); and
- (b) The Kentucky Coal County College Completion Scholarship Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Free Application for Federal Student Aid July 1, 2017 [2016] – June 30, 2018[2017]" (FAFSA), October 2016[December 2015];

(b) The "Free Application for Federal Student Aid July 1, 2018 [2017] – June 30, 2019[2018]" (FAFSA), October 2017[2016];

(c) The "KHEAA Work-Study Program Student Application", July 2001;

(d) The "Teacher Scholarship Application", June 2006;

(e) The "Early Childhood Development Scholarship Application", April 2006;

(f) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(g) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(h) The "Go Higher Grant Program Application", January 2008;

(i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011; and

(j) The "Kentucky Coal County College Completion Scholarship Application", October 2014.

(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. The material may also be obtained at www.kheaa.com.

CHARLES VINSON, Chair

APPROVED BY AGENCY: October 26, 2017

FILED WITH LRC: November 7, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2017, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Rebecca Gilpatrick, phone (502) 696-7394, email rgilpatrick@kheaa.com, and Diana Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-study Program, Teacher Scholarship Program, College Access Program (CAP), Kentucky Tuition Grant (KTG), and Go Higher Grant Programs as well as the Robert C. Byrd Scholarship Program pursuant to KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 164.7894, 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-36, 1070d-37, 1070d-38.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the authority.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing regulation by specifying the latest version of the Free Application for Federal Student Aid (FAFSA) for the 2018-2019 academic year that is to be completed by applicants for participation in the student aid programs administered by the Authority during that academic year.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to require student recipients to complete the correct version of the FAFSA for the desired academic year for which aid is sought.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by specifying the version of the FAFSA applications to be used when applying for an award under one of the student aid programs administered by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the state student aid programs by requiring completion of the correct version of the FAFSA based on academic year for which an award is sought – 2017-2018 or 2018-2019 – in order to participate in said programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for student financial aid through the Authority.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those individuals who seek to participate in the various student financial aid programs administered by KHEAA will be required to complete the correct version of the FAFSA application as specified in this regulation in order to be considered for an award for a specific academic year.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required in order to implement this administrative regulation since it merely specifies the required version of the FAFSA to be used by program participants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3),

(6), 164.7535, 164.769(5), (6)(f), 164.7890, 167.7894, 34 C.F.R. §654.30, §654.41, 20 U.S.C. §1070d-36, 37, 38.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

11 KAR 15:090. 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 establishing a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the authority to establish overall award levels for the program. KRS 164.7879(2)(c) 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 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 year shall be calculated using each letter grade awarded for all courses taken during an academic 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 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 year[term]; and

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

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year[term], 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 year[term] 2015-2016, for an eligible high school student taking a dual credit course during the academic year[term], the course grade assigned by the college must be used by the high school in calculating the KEES grade point average, and shall be included in the KEES calculation[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 year[term] 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 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 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 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 2018-2019[2012-2013] academic year[term], each cooperative education course taken during an academic year shall satisfy KEES curriculum requirements provided the course has been approved by the Office of Career and Technical Education as a work-based learning experience in a career pathway pursuant to 705 KAR 4:123 and 705 KAR 4:041. For all other cooperative education coursework, only one (1)[cooperative education] course per academic year[term] 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

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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) 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. Postsecondary Grade Point Average Calculation and Reporting. (1) Each participating institution shall report to the Authority the cumulative grade point average for each KEES recipient enrolled in that institution no later than June 30 after the completion of the award period.

(2) The cumulative grade point average shall be reported to the hundredths decimal place. Any cumulative grade point average which contains a number of five (5) or greater in the thousandths place shall be rounded up to the nearest hundredth. Any cumulative grade point average which contains a number less than five (5) in the thousandths place shall be rounded down to the nearest hundredth.

(3) In the event a KEES recipient had an incomplete grade(s) at the time the cumulative grade point average was initially reported to the Authority and subsequently receives a final grade, the participating institution must recalculate the recipient's cumulative grade point average as of the end of the appropriate award period and report the updated cumulative grade point average to the Authority.

Section 7[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 year[term]:

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		
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 year[term], 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.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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

Section 8[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 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 five (5) years after 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 9[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 10[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 11[40]. 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 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 12[44]. 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.

CHARLES VINSON, Chair

APPROVED BY AGENCY: October 26, 2017

FILED WITH LRC: November 7, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2017, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Becky Gilpatrick, phone 502-696-7394, email rgilpatrick@kheaa.com.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study; KRS 164.7885(7) requires KHEAA to promulgate regulations regarding the calculation and reporting of cumulative grade point average by high schools and participating institutions. This administrative regulation establishes these requirements related to the KEES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing program eligibility criteria for administration of the KEES program by KHEAA.

(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 regulation by requiring high schools to use the grades assigned by postsecondary institutions to students for completion of a dual credit courses in calculating the cumulative GPA to be reported to KHEAA. Additionally, this amendment will enable more than one cooperative course to satisfy KEES curriculum requirements provided the courses are work-based learning experiences as approved by the Office of Career and Technical Education within the Kentucky Department of Education. Finally, this amendment will establish GPA calculation and reporting criteria for participating postsecondary institutions, particularly with respect to rounding of GPAs.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to insure all high schools utilize the same grade for dual credit courses in calculating KEES grade point average, namely, the grade assigned by the postsecondary institution at which the course is taken. Further, this amendment is necessary to allow more than one work-based learning experience course (also known as cooperative education courses) per term to satisfy KEES curriculum requirements provided the course has been approved by the Office of Career and Technical Education. Finally, this amendment is necessary to set forth GPA reporting requirements for participating postsecondary institutions including rules for rounding decimal places to insure that the GPAs for all KEES recipients are calculated and reported in the same manner.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to promulgate regulations for the administration of the KEES program including the calculating and reporting of GPAs by high schools, the determination of KEES course curriculum requirements, and the establishment of GPA reporting requirements for postsecondary institutions. This amendment conforms to the authorizing statutes by enhancing the GPA calculation requirements for high schools for students completing dual credit courses. It also modifies the KEES course curriculum requirements with regard to work-based learning experiences. Finally, this amendment will enhance the GPA calculation and reporting requirements for participating postsecondary institutions to insure that the GPAs of all KEES recipients are calculated using the same methodology.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by insuring that the GPAs of high school students completing dual credit courses are calculated and reported consistently throughout the Commonwealth. Further, it will assist in the effective administration of the statutes by allowing more than one cooperative course per academic year to fulfill KEES curriculum requirements provided the course is a certified work-based learning experience approved by the Office of Career and Technical Education. Additionally, it will assist in the effective administration of the statutes by insuring that the GPAs of KEES recipients are calculated and reported consistently throughout the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect those high school students who complete dual credit courses as their GPAs will be calculated using the grades assigned by the postsecondary institutions rather than by the high schools they attend. This could potentially affect the high schools whose students complete dual credit courses in the event they have previously used the high school assigned grade in calculating GPAs for KEES reporting. Additionally, the proposed amendment will impact those high school students who enroll in cooperative education courses that are approved work-based learning experiences by allowing more than one such course to count toward KEES curriculum requirements. Finally, the proposed amendment will impact participating postsecondary institutions by requiring them to round GPAs to the nearest hundredth. This will insure that the GPAs of all KEES recipients is calculated and

reported in the same manner, so as to avoid disadvantaging any recipient based on the institution they attend.

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

(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 actions will be required of students beyond enrolling in and completing a dual credit course in order to have the grade assigned by the postsecondary institution utilized in calculating the GPA. No actions will be required of students beyond enrolling in multiple approved work-based learning experiences in order for those courses to be counted as satisfying the KEES curriculum requirements. Participating postsecondary institutions will be required to utilize the rounding rules established in the amended regulation in order to calculate and report recipient GPAs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost will required of any of the impacted entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those students who enroll in and complete a dual credit course will have the grade assigned by the postsecondary institution utilized in calculating the GPA. Those students who enroll in multiple approved work-based learning experiences will have those courses counted as satisfying the KEES curriculum requirements. Participating postsecondary institutions will be able to continue participating in the KEES program by calculating and reporting recipient GPAs as required by the amended regulation.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(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: Any increase in funding as a result of the amendment to this administrative regulation would be nominal at most. Although the changes could increase the overall KEES award of a participating student, this would be negligible.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue for the first year.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue for subsequent years.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation for the first year.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PERSONNEL BOARD
(Amendment)**

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111

STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

Title Code	Job Classification	Length of Initial Probationary Period
20000538	Golf Course Superintendent I	9 months
20000539	Golf Course Superintendent II	9 months
20000558	Parks Golf Professional	9 months
20000677	State Park Ranger I	9 months
20000562	Resort Park Manager I	12 months
20000563	Resort Park Manager II	12 months
20000564	Resort Park Manager III	12 months
20000568	Parks Program Services Supervisor	9 months
20000569	Parks Camping/Boat Dock Manager	9 months
20000570	Park Business Manager I	12 months
20000571	Park Business Manager II	12 months
20000572	Park Manager I/Historic Site Manager	12 months
20000573	Park Manager II	12 months

20000574	Park Manager III	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
20000672	Facilities Security Sergeant	12 months
20000673	Facilities Security Lieutenant	12 months
20000676	State Park Ranger Recruit	12 months
20000680	Facilities Security Officer II	12 months
20000683	Mounted Patrol Officer Recruit	12 months
20000687	Police Telecommunicator I	12 months
20000688	Police Telecommunicator II	12 months
20000689	Police Telecommunications Shift Supervisor	12 months
20000690	Police Telecommunications Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months
20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months
20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
20000716	Fish and Wildlife Telecommunicator I	12 months
20000813	Boiler Inspector I	12 months
20000820	Fire Protection Systems Inspector	12 months
20000870	Financial Institutions Examiner I	12 months
20000871	Financial Institutions Examiner II	12 months
20000872	Financial Institutions Examiner III	12 months
20000873	Financial Institutions Examiner IV	12 months
20000874	Financial Institutions Examiner Specialist	12 months
20000888	Insurance Fraud Investigator I	12 months
20000889	Insurance Fraud Investigator II	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000963	Therapy Program Assistant	9 months
[20000974]	Houseparent I	[12 months]
[20000972]	Houseparent II	[12 months]
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001037	Medical Investigator I	12 months
20001038	Medical Investigator II	12 months
[20001075]	Student Development Associate	[12 months]
[20001076]	Student Development Assistant	[12 months]
20001104	KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator I	12 months
20001105	KSB/KSD Administrator III	12 months
20001106	KSB/KSD Administrator IV	12 months

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

20001107	KSB/KSD Administrator V	12 months
20001108	KSB/KSD Administrator VI	12 months
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001135	Juvenile Facility Superintendent I	12 months
20001136	Juvenile Facility Superintendent III	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months
20001139	Juvenile Facility Superintendent II	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months
20001162	Human Rights Research/Information Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
[20001480]	Forestry Equipment Supervisor	12 months]
[20001481]	Nursery Foreman	12 months]
[20001482]	Nursery Superintendent	12 months]
[20001483]	Forester	12 months]
[20001484]	Forester Chief	12 months]
[20001485]	Forester Regional	12 months]
[20001486]	Rural Fire Suppression Technical Advisor	12 months]
[20001487]	Forestry Program Specialist	12 months]
[20001488]	Forestry Program Manager	12 months]
[20001489]	Forestry Program Supervisor	12 months]
[20001492]	Forest Ranger Technician I	12 months]
[20001493]	Forest Ranger Technician II	12 months]
[20001494]	Forest Ranger Technician III	12 months]
[20001495]	Forest Ranger Technician Regional	12 months]
20001788	Revenue Field Auditor I	12 months
20001807	Revenue Auditor I	12 months
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001882	Public Advocate Investigator I	12 months
20001895	Environmental Administrative Hearing Officer	12 months
20001899	Mitigation Specialist I	12 months
20001904	Investigator I	12 months
21002025	Highway Technician Assistant I	12 months
21002026	Highway Technician Assistant II	12 months
21002027	Highway Technician I	12 months
21002028	Highway Technician II	12 months
21002029	Highway Technician III	12 months
21002030	Highway Technician IV	12 months
21002031	Highway Technician	12 months

	Superintendent I	
21002032	Highway Technician Superintendent II	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion, as required by KRS 18A.005(27), except as provided in KRS 18A.111.

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

STAFFORD EASTERLING, General Counsel

APPROVED BY AGENCY: November 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017, at 10:00 a.m. Eastern Time at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 11:59 p.m. December 31, 2017. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Stafford Easterling, General Counsel, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693, email Stafford.Easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation

sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment would establish an initial twelve-month probationary period for the Kentucky Transportation Cabinet's newly-created Highway Technician Series (Highway Technician Assistant I and II, Highway Technician I, II, III and IV, Highway Technician Superintendent I and II). Reduce the probationary period from twelve months to six months for the Kentucky Department of Education's Houseparent I and II, Student Development Associate and Student Development Assistant. Increase the Finance and Administration Cabinet's probationary period from six to twelve months for Revenue Auditor I and Revenue Field Auditor I. Reduce the probationary period from twelve months to six months for Forest Ranger Technician I, II and III, Forest Ranger Technician Regional, Forester, Forester Chief, Forester Regional, Forestry Program Manager, Forestry Program Supervisor, Forestry Program Specialist, Forestry Equipment Supervisor, Rural Fire Suppression Technical Advisor, Nursery Foreman and Nursery Superintendent. Increase the Tourism, Arts and Heritage Cabinet, Department of Parks, probationary period from six months to nine months for Parks Golf Professional, Golf Course Superintendent I and II, Parks Camping/Boat Dock Manager, State Park Ranger 1 and Parks Program Services Supervisor.

(b) The necessity of the amendment to this administrative regulation: The Secretary of the Personnel Cabinet, in consultation with the respective agencies, has recommended changes in the duration of the initial probationary period for the enumerated classifications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the list of classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment would establish a twelve-month probationary period for the newly-created Highway Technician series. Increase the probationary period for Revenue Auditor I and II.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications, and the state government agencies that employ them.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

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

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation 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. This regulation must apply equally to all classified employees in all state agencies with classified 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? Kentucky Transportation Cabinet; Kentucky Department of Education; Finance and Administration Cabinet; Energy and Environment Cabinet; and Tourism, Arts and Heritage Cabinet, Department of Parks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.0751 and KRS 18A.111

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable

(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? Not applicable

(c) How much will it cost to administer this program for the first year? Not applicable

(d) How much will it cost to administer this program for subsequent years? Not applicable

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It is not anticipated that this administrative regulation will have a fiscal impact.

GENERAL GOVERNMENT

Kentucky Board of Hairdressers and Cosmetologists (Amendment)

201 KAR 12:010. Administrator's duties.

RELATES TO: KRS[317A.030;] 317A.040

STATUTORY AUTHORITY: KRS 317A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.040 requires the employment of an administrator to administer the provisions of KRS Chapter 317A and the policies and administrative regulations of the board~~[coordinate the examinations, inspections, and supervise the general office functions of the agency]~~. This administrative regulation establishes the duties of the board administrator.

Section 1. Duties. (1) The administrator shall:

(a) Serve as the board's liaison officer and coordinate all

administrative matters of the board.

(b) Assist the board in hiring proctors to provide examinations.

(c) Fill merit positions from the merit register as required by KRS Chapter 18A and KAR title 101.

(2) The administrator may:

(a) Inspect any establishment licensed by the board or investigate a reported illegal practice or facility in violation of KRS Chapter 317A, 317B, or any administrative regulation promulgated by the board.

(b) Issue an administrative subpoena for the production of:

1. A license;

2. The attendance of a witness; or

3. The production of records, documents, and material before the board

~~[serve as the board's liaison officer and coordinator in all administrative matters.~~

~~—Section 2. The administrator shall have full powers to inspect any establishment licensed by this board or investigate any reported illegal practice.~~

~~—Section 3. The administrator shall have the power for and on behalf of the board to issue subpoenas for licenses, for the attendance of witnesses, and the production of such records, documents, and material as may be necessary in the conduct of board meetings.~~

~~—Section 4. The administrator shall assist the members of the board in the giving and supervising of examinations.~~

~~—Section 5. The administrator shall fill all merit positions from the merit register as required by the Department of Personnel statutes and rules and administrative regulations. Any or all dismissals of employees shall be made by the majority decision of the board with notification to be made by the administrator. Any suspension or disciplinary action may be made by the appointing authority of the board].~~

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 15, 2107 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017, at 9:30, at Kentucky Board of Hairdressers and Cosmetologists. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone(502) 564-4262, fax (502) 564-0481, email julie.campbell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the duties of the board administrator.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the board administrator with the authority to conduct day-to-day agency oversight.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being amended to clarify duties and authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the role and tasks of the administrator.

(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 clarify and streamline the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the role of the board administrator set forth in KRS 317A.040.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides guidelines for the administrator based on the current statutory requirements in KRS 317A.040.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will specify administrator duties to promote continuity across board changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact to licensees, businesses, organizations, or state or local governments.

(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 does not impose any requirements on regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The authority of the administrator is clarified to facilitate management and day-to-day operations.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis 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: Current funding will not change.

(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 changes or increases in fees is required by this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation does not impose any requirements on current or prospective 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? Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060, and KRS 317B.020.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

(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 funds will be raised.

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

GENERAL GOVERNMENT
Kentucky Board of Hairdressers and Cosmetologists
(Amendment)

201 KAR 12:100. Sanitation standards.

RELATES TO: KRS[317A.060:] 317A.130, 317B.020(3)

STATUTORY AUTHORITY: KRS 317A.060[317A.130], 317B.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020(3) authorize the Kentucky State Board of Hairdressers and Cosmetologists to regulate the practice of cosmetology, nail technology, and esthetics in Kentucky and establish[uniform] standards for the course and conduct of school owners, instructors, apprentice instructors, licensed cosmetologists, nail technicians, beauty salons, nail salons, cosmetology schools, and estheticians to protect the health and safety of the public[sanitation]. This administrative regulation establishes sanitation standards for all licensed facilities.

Section 1. General Sanitation. The entire licensed facility, including all equipment, employees, and implements contained in the facility, shall be continually maintained in a sanitary manner.

Section 2. Methods of Sanitizing. (1) All[Any] implements[to be] used on the public shall be sanitized. Each method of sanitation shall be bacteriologically effective.

(2) A commercially prepared sanitizing agent or disinfectant shall be used in accordance with the manufacturer's instructions. An approved sanitizing agent or disinfectant is:

(a) Environmental Protection Agency registered bactericidal, virucidal and fungicidal disinfectant that is approved for use in hospital settings and used in accordance with the instruction label for dilution ratio and contact time.

(b) Environmental Protection Agency registered Sodium Hypochlorite 5.25 percent or higher (household bleach) product used in accordance with the instructions for disinfection and dilution on the label. Bleach must be active (not expired) with a manufacture date of less than six (6) months prior to use.

Section 3. Chemical Safety. All chemicals used in a licensed facility shall be:

(1) Transported and stored in accordance with the manufacturer's label;

(2) Stored in original containers in locked cabinets. They may not be stored in public spaces or bathrooms;

(3) May only be mixed and applied to individuals as specifically instructed by the manufacturer's label, including patch tests; and

(4) Must be discarded according to the manufacturer's label and, where applicable, local, state and federal rules.

Section 4[3]. Disinfection of Implements and Spills; Blood and Body Fluids. (1) Each implement and surface used in a licensed facility shall first be thoroughly cleaned prior to disinfection.

(a) Disinfectants shall be prepared fresh daily and each time the solution becomes diluted or soiled.

(b) Contact Time. To clean a surface, it shall be left wet or completely immersed for ten (10) minutes or longer as required by the manufacturer for disinfecting against HIV, HBV, and all other

viruses, bacteria, and fungi.

(c) Any nonporous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then an appropriate disinfectant shall be used.

(2) All used implements shall first be cleaned of visible dirt, debris, or bodily fluids with warm soapy, detergent water and then disinfected by completely immersing in an appropriate disinfectant.

(a) All[nonporous] implements that come into contact with intact skin, blood, or bodily fluids shall be thoroughly cleaned before immersion in an appropriate disinfectant. [An appropriate disinfectant for objects that come into contact with intact skin shall be:

1. An Environmental Protection Agency registered, hospital grade bactericidal (especially pseudomonacidal), virucidal, and fungicidal that is mixed and used according to the manufacturer's directions; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.]

(b) [All nonporous implements which have come in contact with blood or body fluids shall be thoroughly cleaned before immersion in an appropriate disinfectant. An appropriate disinfectant shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(c) For personal protection against blood-borne pathogens, cleanup shall be done wearing protective gloves and gowns. Eye protection shall be used for large spills.

[(d) All implements that have come in contact with blood or body fluids shall be disinfected by complete immersion in an appropriate disinfectant.

(3) Any nonporous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then an appropriate disinfectant shall be used.

(a) An appropriate disinfectant for surfaces that have come in contact with blood or body fluids shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) For personal protection against blood-borne pathogens, cleanup shall be done wearing protective gloves and gowns. Eye protection shall be used for large spills.

(4) Household bleach may be used as an effective disinfectant for all purposes in a salon or school, with the considerations listed in this subsection.

(a) Bleach solutions shall be mixed daily and used in a ten (10) to one (1) solution, nine (9) parts tap water and one (1) part bleach.

(b) Bleach shall be kept in a closed covered container and not exposed to sunlight.

(c) Bleach may produce eye irritation or mouth, esophageal, and gastric burns.

(d) Bleach is corrosive to metals.

(e) Bleach vapors might react with vapors from other chemicals, and therefore shall not be placed or stored near other chemicals used in salons (i.e. acrylic monomers, alcohol, other disinfecting products), or near a flame.

(f) Used or soiled bleach solution shall be discarded every day by pouring the solution down a sink basin or toilet bowl.]

(3)[(5)] A[bottle] container other than the original manufacturer's container used for application of appropriate disinfectant shall be properly labeled as to contents, percentage solution, and date mixed.

(4)[(6)] Cleanup items from minor cuts or items containing blood or other bodily fluids shall be double bagged or placed in biohazard containers. A licensee shall consult with the local health department for directions about disposal of biohazard containers.

(5) Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean gauze, cotton, or any other sanitary item.

(6) All Food and Drug Administration designated "medical devices" shall only be disinfected by appropriate Environmental

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Protection Agency approved disinfectants in accordance with the manufacturer's instructions.

(7)[(8 Environmental Protection Agency-approved disinfectants are indicated by their registration number on the product label and the manufacturer's directions for use shall always be followed.] All esthetics facilities will employ a Sharps disposal container as needed for disposal of hazardous materials.

Section 5[4]. Disinfection Procedures. (1) Shampoo Bowls. All shampoo bowls[~~-, shampoo boards, cups,~~] or similar items shall be sanitized after each use.

(2) Towel Warmers must be disinfected daily using sanitizing wipes or a spray and left open to allow the warmer to dry completely.

(3) Towels used in a towel warmer both wet and dry must be washed daily and replaced.

(4) Electrical equipment that provides circulating, whirlpool, or vacuum effects including a microdermabrasion or facial machine and a pedicure station must be:

(a) Cleaned and disinfected after each use by removing all movable parts by:

1. Filling, circulating, cleaning, and disinfecting with the use of hospital grade disinfectant or the ten (10) percent bleach solution that is circulated through the machine for the minimum time recommended by the manufacturer; and

2. Rinsing and air drying or wiping dry with a clean cloth or paper towel.

(5) A nail drill or body treatment equipment shall be:

(a) Cleaned and disinfected after each use by removing all movable parts; and

(b) Flushed, cleaned, and disinfected bi-weekly with the use of hospital grade disinfectant or the ten (10) percent bleach solution circulated through the machine for the minimum time recommended by the manufacturer.

(6) Heated electrical equipment, such as a thermal iron shall be sanitized by the heat source. Unheated parts of heated electrical equipment shall be cleaned and disinfected according to the manufacturer's recommendations.

(7) All other electrical equipment, including clippers and attachments, shall be cleaned and disinfected after each use by:

(a) Removing hair and all foreign matter from the equipment; and

(b) Completely saturating the clipper blade and attachment with an EPA-registered high-level disinfectant solution, spray, or foam used according to the manufacturer's instructions.

(8) All nonporous items to be used on multiple clients must be cleaned and disinfected after use.

(9) Drill bits must be soaked in acetone to remove product, scrubbed, and soaked in disinfectant for full contact time.

(10) All nonelectrical items required to be cleaned and disinfected after each use including, but not limited to, combs, brushes, shears, hair clips, hair rollers, pushers, nippers, plastic/metal spatulas shall be cleaned and disinfected. All multi-use items must be stored in clean, covered container marked "disinfected" or "ready to use".

(11) Wax pots must be completely cleaned and disinfected when the wax is contaminated or debris is visible through the following steps:

(a) Wax must be emptied and disposed of properly;

(b) Pot must be washed with detergent and rinsed;

(c) All pot surfaces must be wiped or sprayed with EPA registered disinfectant following manufacturer's guidelines for contact time;

(d) Pots shall be air dried or wiped dry with a clean paper towel;

(e) New wax must always be used and pot must remain covered at all times; and

(f) Paraffin wax must be portioned out to prevent contamination between clients and disposed of immediately.

(12) Any item that cannot be cleaned and disinfected is considered single use and must be disposed of after each use. This includes, but is not limited to, nail files/emery boards made of any material except metal or glass, all cotton, buffing blocks, pumice stones, wooden cuticle pushers, slipper shoes, toe

separators, wooden spatulas, neck strips, and paper coverings.

Section 6[5]. Proper Protection of Neck. (1) A shampoo apron, hair cloth, or similar article shall not be placed directly against the neck of the patron, and shall be kept from direct contact with the patron by means of a paper neck band or clean towel.

(2) A neck band of paper[~~or cloth~~] shall not be used more than once.

(3) A towel or cloth shall not be used more than once without proper laundering.

Section 7[6]. Use of Creams. (1) A cream or other semi-solid substance shall be removed from its container with a clean, sanitized spatula.

(2) A spatula made of a washable nonabsorbent material shall be sanitized before re-use[being used again].

Section 8.[~~Use of Styptics. Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean gauze, cotton, or any other sanitary item.~~] Special Solution Containers. Single use product containers shall be used to prevent the contamination of unused solution. All leftover product shall be disposed of, not reused.

Section 9. Use of Powder. Powder shall be dispensed from a shaker or similar receptacle and shall be applied with a disposable puff, or cotton pledget, or other disposable applicator.

Section 10. Walls and Floors. Walls, floors, and fixtures shall be kept sanitary and[~~kept~~] clean at all times.

Section 11. Trash Containers and Debris. (1) All trash containers must have solid sides, a lid or cover, and a liner must always be used. Lids must close completely.

(2) All hair and debris must be swept up immediately following each client and placed in the closed trash container.

Section 12[14]. Proper Laundering Methods. (1) All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to the manufacturer's directions for sanitation purposes.

(2) Laundry may be done through a commercial laundry service.

(3)[(2)] A closed, dustproof cabinet shall be provided for clean towels and linen, and a closed, side vented[dustproof] hamper or receptacle shall be provided for all soiled towels and linens.

Section 13[42]. Personal Hygiene. (1) Every person licensed or permitted by the board shall thoroughly cleanse his or her hands with soap and water or an alcohol-based hand sanitizer of at least seventy (70) percent alcohol[handrub] immediately before serving each patron.

(2) Hand sanitizer shall be made available for use by patrons at each nail station in the licensed facility[Each licensee shall wear a clean washable outer garment while serving a patron in a salon].

(3) A cosmetology[An] instrument or implement shall not be carried or stored in a pocket, belt, apron, or smock.

Section 14. Prohibited Items. The following sanitation methods and cosmetology practices are prohibited:

(1) Methyl Methacrylate acid (MMA);

(2) Isobornyl Methacrylate (IBMA);

(3) Blades for cutting the skin;

(4) UV Sterilizers;

(5) Roll on wax;

(6) Waxing of nasal hair;

(7) Any product banned by the FDA; and

(8) Live fish, leeches, snails and other living creatures for use in any cosmetic service.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017, at 9:30 a.m., at Kentucky Board of Hairdressers and Cosmetologists. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email julie.campbell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all sanitation standards in salons and cosmetology schools to protect the health and welfare of the public throughout the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to impose sanitation standards in all salon and school facilities throughout the Commonwealth to protect patrons from disease and contamination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being amended to update and address areas of concern surrounding new bacteria and pathogens that can transmit and cause disease through transference in a salon or school setting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation outlines and defines standards as required by KRS 317A.130 to protect the health and safety of the public in the Commonwealth by the Kentucky Board of Hairdressers and Cosmetologists.

(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: Current regulations addressing sanitation are split into two separate areas and lack detail to address current industry standards. This amendment will attend to the deficiencies in the previous regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to consolidate all sanitation standards into one administrative regulation and attend to the deficiencies in the previous regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides updated guidelines for sanitation based on the statutory requirements in KRS 317A.130.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a consistent sanitation standard to allow public protection and less variability in inspections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools, approximately 10,000 students, and approximately 25,000 additional licensees, and nearly 6,000 salons 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: This amendment consolidates and updates the current processes, definitions, and intent of existing administrative regulations governing sanitation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a higher rate of compliance with the law with the clarity provided in this amendment. All sanitation standards are now in one administrative regulation.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding will not change.

(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 changes or increases in fees will be needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment 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? Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060, and KRS 317B.020.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

(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 additional funds will be raised.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:095. Retired nurse licensure status.

RELATES TO: KRS 314.041(10), 314.051(10)

STATUTORY AUTHORITY: KRS 314.041(10), 314.051(10), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(10) and 314.051(10) authorize the board to promulgate administrative regulations concerning the granting of retired status for persons holding licensure as a "registered nurse" or a "licensed practical nurse". This administrative regulation establishes requirements for obtaining retired status and establishes requirements for changing licensure status to active.

Section 1. Retired Status. (1)[Beginning November 1, 2005,] A registered nurse or a licensed practical nurse who is retired and holds or has held a Kentucky nurse license may apply for retired status by:

(a) Completing the "Application for Retired Status" as required by 201 KAR 20:370;

(b) Paying the fee set out in 201 KAR 20:240; and

(c) Submitting a copy of an official name change document, such as a court order, marriage certificate, Social Security card, or divorce decree, if applicable.

(2)[Beginning November 1, 2006,] A registered nurse who is retired and holds or has held a Kentucky nurse license may apply for retired status by:

(a) Completing the "Application for Retired Status" as required by 201 KAR 20:370;

(b) Paying the fee set out in 201 KAR 20:240; and

(c) Submitting a copy of an official name change document, such as a court order, marriage certificate, Social Security card, or divorce decree, if applicable.

(3) If the nurse currently holds an active license, he shall return the active license card with the "Application for Retired Status".

(4)(a) Upon completion of all requirements, the board shall issue the nurse a retired status license.

(b) The retired status license shall remain in effect unless reinstated in accordance with 201 KAR 20:225. A nurse who is currently under disciplinary action shall not be eligible for retired status.

Section 2. (1) An individual who has been granted retired status in Kentucky shall not be employed in this state as a nurse or function in the capacity of a nurse while maintaining the retired status.

(2) An individual who is employed or who practices as a nurse in this state while on retired status shall be considered to be practicing without a license and in violation of KRS 314.031 and subject to the penalties in KRS 314.091 and 314.991. [Section 3. Inactive Licensure Status. (1) The requirements established in this section shall apply until:

(a) November 1, 2005 for a licensed practical nurse; or

(b) November 1, 2006 for a registered nurse.

(2) If an individual has held inactive licensure status in Kentucky and wishes to apply for active licensure status, the individual shall:

(a) Complete the "Application for Licensure" as required by 201 KAR 20:370, Section 1(1)(a);

(b) Pay the current application fee for an active license required by 201 KAR 20:240, Section 1(2)(h); and

(c) Show evidence of:

1. Licensure in another jurisdiction and active nursing practice of at least 500 hours within the preceding five (5) years in that jurisdiction;

2. If an applicant has held an inactive license for five (5) years or less, completion of fourteen (14) contact hours of continuing education for each year since the last year of active licensure, with

a minimum of twenty-eight (28) contact hours to a maximum of seventy (70) contact hours.

a. Twenty-eighty (28) hours of continuing education shall have been earned within twenty-four (24) months of the date of the application.

b. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement; or

3. If an applicant has held an inactive license for more than five (5) years, completion of:

a. A refresher course approved by the board, pursuant to 201 KAR 20:380. The refresher course shall have been completed within two (2) years of the date of the application; or

b. At least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) An individual who has been granted inactive status in Kentucky shall not be employed in this state as a registered nurse or licensed practical nurse or function in the capacity of a nurse while maintaining the inactive status. An individual who is employed or who practices as a nurse in this state while on inactive status shall be considered to be practicing without a license and in violation of KRS 314.031 and subject to the penalties in KRS 314.091 and 314.991.

(4) Individuals changing licensure status from inactive to active during the first licensure period following issuance of a license by either examination or endorsement shall not lose the continuing education exemption of KRS 314.073(1).

(5) An individual who was licensed on or after July 15, 1996, and who changes licensure status from inactive to active shall provide evidence of having earned three (3) hours of continuing education in domestic violence as required by KRS 194A.540. This requirement shall apply to an individual one (1) time only. Once earned, it shall not apply to any subsequent change of status.]

LEWIS PERKINS, President

APPROVED BY AGENCY: October 19, 2017

FILED WITH LRC: November 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) December 31, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to obtain a retired nurse license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314 041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to promulgate an administrative regulation concerning

retired status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the standards and process for retired licenses.

(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 removes unnecessary language. In particular, dates that are no longer needed and references to inactive licensure status, which is no longer applicable.

(b) The necessity of the amendment to this administrative regulation: The regulation needed clean-up.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants for licensure, number 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:

Complete the application truthfully.

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

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

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

(a) Initially: There is no additional cost.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:400. Delegation of nursing tasks.

RELATES TO: KRS 311A.170, 314.011, 314.021(2), 314.091(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. KRS 314.091(1)(d) prohibits a person from negligently or willfully acting in a manner inconsistent with the practice of nursing. This administrative regulation establishes requirements that govern the delegation of a nursing task in a safe, effective manner so as to safeguard the health and welfare of the citizens of the Commonwealth.

Section 1. Definitions. (1) "Board" is defined in KRS 314.011(1).

(2) "Client" means a patient, resident or consumer of nursing care.

(3) "Competence" means performing an act in a safe, effective manner.

(4) "Delegatee" means a person to whom a task is delegated.

(5) "Delegation" is defined in KRS 314.011(2).

(6) "Delegator" means the nurse delegating a task to another person.

(7) "Direct supervision" means the continuous, direct, onsite supervision by a registered nurse.

(8) [(6)] "Nurse" is defined in KRS 314.011(3).

(9) "Nurse Extern" means an employee in a healthcare facility who is also actively enrolled as a student in a board approved prelicensure program of nursing.

(10) "Nursing assistance" is defined in KRS 314.011(13).

(11) [(7)] "Nursing task" means an act included in the definition of registered nursing practice, advanced practice registered nursing, or licensed practical nursing practice pursuant to KRS 314.011(6), (8), or (10).

(12) [(8)] "Paramedic" is defined in KRS 311A.010.

(13) [(9)] "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.

(14) [(40)] "Unlicensed person" means an individual, other than a nurse, the client, or the client's family, legal guardian, or delegatee, who functions in an assistant or subordinate role to the nurse.

Section 2. Nurse's Responsibility in Delegation. (1) A registered nurse or a licensed practical nurse may delegate a task to an unlicensed person in accordance with this section and Sections 3, and 4, and 5 of this administrative regulation.

(2) A registered nurse may delegate a task to a paramedic employed in a hospital emergency department in accordance with KRS 311A.170 and Sections 3 and 4 of this administrative regulation.

(3) Prior to delegating a nursing task, the nurse shall determine

the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation and assuring documentation.

(4) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated task or determined that the unlicensed person is competent to perform the nursing task.

(5) A nursing task shall be delegated directly or indirectly. An indirect delegation shall not alter the responsibility of the nurse for appropriately assigning and supervising an unlicensed person.

(6) A nurse who delegates a nursing task in violation of this administrative regulation or participates in the utilization of an unlicensed person in violation of this administrative regulation shall be considered acting in a manner inconsistent with the practice of nursing.

Section 3. Criteria for Delegation. The delegation of a nursing task shall meet the following criteria:

(1) The delegated nursing task shall be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate;[-]

(2) The delegated nursing task shall be a task that, in the opinion of the delegating nurse, can be competently and safely performed by the delegatee without compromising the client's welfare;[-]

(3) The nursing task shall not require the delegatee to exercise independent nursing judgment or intervention; and[-]

(4) The delegator shall be responsible for assuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of a delegated nursing task.

(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including the following:

(a) The stability and acuity of the client's condition;

(b) The training and competency of the delegatee;

(c) The complexity of the nursing task being delegated; and

(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

Section 5. Nurse Extern. (1) The nurse extern may perform nursing tasks as delegated under the direct supervision of a registered nurse in accordance with this section. Those tasks may include the administration of medication or other tasks that have been taught in the nurse extern's nursing education program. The nurse extern shall be individually educationally prepared and clinically competent to perform the task. At a minimum, this competency shall be verified by an official letter from the nursing program documenting that the nurse extern has successfully completed the task as a student in the program of nursing. The employer should also independently verify and document the competency of the nurse extern to successfully perform the acts that the nurse extern will perform.

(2) A licensed practical nurse may participate with the registered nurse in providing supervision of a nurse extern enrolled in a practical nurse program of nursing.

(3) The nurse extern may provide nursing assistance that is routinely a part of any nursing assistant's job description.

(4) For a nurse extern enrolled in a practical nurse program of nursing, the administration of medications shall be limited by 201 KAR 20:490.

(5) A nurse extern shall not substitute for licensed nursing staff.

(6) A nurse extern shall not be required to independently assume the role, function or responsibility of licensed personnel.

LEWIS PERKINS, President

APPROVED BY AGENCY: June 15, 2017

FILED WITH LRC: November 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017 at 10:00 a.m. (EST) in the office of the

Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) December 31, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards and requirements for the delegation of nursing tasks to unlicensed persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.011(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.011(2) which requires the Board to promulgate an administrative regulation on delegation.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment recognizes a category of unlicensed individuals to be known as nurse externs. Nurse externs are nursing students who are employed by a hospital and function as nursing assistants. This administrative regulation sets the requirements for delegation of nursing tasks by a nurse to a nurse extern. The Cabinet for Health and Family Services is amending 902 KAR 20:016 concerning hospitals to recognize nurse externs and refer to this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health and Family Services requested this amendment to work in conjunction with its amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By setting standards and requirements for nurse externs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: hospitals in Kentucky, number unknown; nurse externs, number 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:

Hospitals may utilize nurse externs consistent with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost imposed by the

amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to utilize nurse externs as a part of their work force. Nurse externs will gain knowledge and experience that will help them become competent nurses.

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

(a) Initially: There is no additional cost.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

201 KAR 46:010. Definitions for 201 KAR Chapter 46.

RELATES TO: KRS 311B.020

STATUTORY AUTHORITY: KRS 311B.010, 311B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations. This administrative regulation establishes definitions for terms used in 201 KAR Chapter 46.

Section 1. Definitions. (1) "Accredited educational program" means an educational program accredited by the Joint Review Committee on Education in Radiologic Technology (JRCERT) or

the Joint Review Committee on Educational Programs in Nuclear Medicine Technology (JRCNMT).

(2) "Advanced imaging professional" means an individual who holds credentialing by the American Registry of Radiologic Technologists (AART) or by the Nuclear Medicine Technology Certification Board (NMTCB) as a registered radiologist assistant (R.R.A.) or nuclear medicine advanced associate (NMAA).

(3) "Alternate course of study" means an independent course of study that qualifies an individual to take an examination approved by the board.

(4) "Authorized user" is defined by KRS 311B.020(4).

(5) "Board" is defined by KRS 311B.020(5).

(6) "Clinical education" means the component of the educational program that provides for supervised, competency-based, clinical education and experience.

(7) "Computed tomography" or "CT" means the process of using specialized radiation producing equipment to create cross-sectional images of any part of the body.

(8) "Computed tomography technologist" or "CT technologist" means an individual who has obtained a post-primary certification in computerized tomography from the American Registry of Radiologic Technologists (ARRT).

(9) "Continuing education" is defined by KRS 311B.020(7).

(10) "Continuing education unit" or "CEU" means fifty (50) contact minutes of participation in a continuing education experience completed by:

(a) Attendance at a professional meeting;

(b) Documenting completed, approved independent study; or

(c) Documenting completed academic courses applicable to health care, medical imaging, radiation therapy, or related courses.

(11) "Contrast procedure" means a diagnostic or therapeutic procedure performed while administering contrast media into the human body to visualize anatomy not otherwise demonstrated on an image receptor.

(12) "Course of study" means a curriculum in radiologic technology, nuclear medicine technology, the advanced imaging profession, limited x-ray machine operation, or radiation therapy approved by the board.

(13) "Didactic education" means the component of the educational program that provides formal instruction with specific objectives and methods for assessing the student's progress for entry-level competency.

(14) "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts[or a licensee].

(15) "Educational program" means a board-approved, accredited educational program or limited x-ray machine operator program.

(16) "Facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, or office of a physician or portion thereof, in which medical imaging or radiation therapy are performed.

~~(17) "Independent study course" means a form of education offered by the board in partnership with an employer to provide limited scope radiography, podiatry, or bone densitometry education to fulfill the requirements established in 201 KAR 46:081, Section 8.~~

~~(18) "Indirect supervision" means supervised by a licensed practitioner of the healing arts[or licensee] who is immediately available in the individual's place of employment[or sponsoring institution].~~

~~(19) "License" means the document issued to a licensee to work as an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator in Kentucky.~~

~~(20) "Licensed practitioner" or "licensed practitioner of the healing arts" is defined by KRS 311B.020(8).~~

~~(21) "Licensee" means an individual licensed to perform the duties of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator.~~

~~(22) "Licensure" means the process by which a license is issued by the board pursuant to 201 KAR Chapter 46 and in~~

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

accordance with KRS Chapter 311B.

(22){(23)} "Limited radiographic procedures" means the following procedures:

- (a) Routine chest and thorax;
- (b) Cranium;
- (c) Extremity;
- (d) Podiatric;
- (e) Vertebral column radiography; and
- (f) Bone densitometry procedures.

(23){(24)} "Limited x-ray machine operator" is defined by KRS 311B.020(9).

(24){(25)} "Medical imaging technologist" is defined by KRS 311B.020(10).

(25){(26)} "National organization" is defined by KRS 311B.020(11).

(26) "Medical Imaging" means producing visual images of the human body utilizing various types of energy and technologies to determine the presence of disease and injury. Medical imaging is used for diagnostic, screening, treatment and monitoring purposes.

(27) "Nuclear medicine advanced associate" means an individual certified by the Nuclear Medicine Technology Certification Board (NMTCB) as a nuclear medicine advanced associate (NMAA) who works under the supervision of a radiologist or nuclear medicine physician, in accordance with practice standards.

(28) "Nuclear medicine technologist" is defined by KRS 311B.020(12).

(29) "Nuclear medicine technology" means technology applied by a nuclear medicine technologist utilizing radioactive material and with the nuclear medicine technologist being under the supervision of an authorized user.

(30) "PET" means the positron emission tomography.

(31) "Positron emission tomography" means the utilization of positron-emitting radioactive material for medical imaging under the supervision of an authorized user.

(32) "Practice standards" means the standards established by board-approved professional organizations that define the practice expectations of individuals within the professions.

(33) "Primary discipline" means radiography, nuclear medicine, and radiation therapy.

(34) "Professional educational guidelines" means curriculum and educational standards established by national organizations and approved by the board.

(35) "Program director" means an individual designated by a sponsoring institution to assure that the educational programs for an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, and a limited x-ray machine operator are properly conducted.

(36) "Provisional nuclear medicine technology license" means a license issued by the board to an individual participating in the alternate nuclear medicine course of study approved by the board.

(37) "Provisional training license" means a license issued to a nuclear medicine technologist or a radiation therapist pursuing post-primary certification in computed tomography or a license issued to a radiographer or radiation therapist pursuing post-primary certification in PET.

(38) "Radiation safety officer" means an individual who has the training, knowledge, and responsibility to apply appropriate radiation safety practices.

(39) "Radiation therapist" is defined by KRS 311B.020(15).

(40) "Radiation therapy" means the therapeutic administration of ionizing radiation by a radiation therapist.

(41) "Radioactive materials" means a solid, liquid, or gas that emits ionizing radiation spontaneously.

(42) "Radiographer" is defined by KRS 311B.020(16).

(43) "Radiography" means the utilization and administration of ionizing radiation to produce medically relevant images for the diagnosis of injury or disease and shall include a comprehensive scope of diagnostic-radiologic procedures.

(44) "Radiologist assistant" means an individual certified by the American Registry of Radiologic Technologists (ARRT) as a registered radiologist assistant (R.R.A.) who works under the supervision of a radiologist, in accordance with supervision

guidelines jointly established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT.

(45) "Radionuclide" means a radioactive element or a radioactive isotope.

(46) "Radiopharmaceuticals" means radioactive drugs used for the diagnosis and treatment of disease.

(47) "Scope of practice" means the parameter of the specific practice.

(48) "Source of radiation" means a radioactive material, device, or equipment emitting or capable of producing ionizing radiation.

(49) "Sponsoring institution" means an institution recognized by the board to provide a post-secondary educational program in medical imaging, limited x-ray machine operation, radiation therapy, or advanced imaging professions.

(50) "Student" means an individual enrolled in a board-recognized educational program.

(51) "Supervision of students" means supervised by a licensed practitioner of the healing arts or a licensee in the appropriate field of practice who directs the activity of students.

(52) "Temporary license" means a nonrenewable license issued by the board as established in 201 KAR Chapter 46 permitting an individual to practice for a specified period of time.

(53) "Therapeutic procedures" means medical treatments that can help diagnose, cure, or treat a patient's condition.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. 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 December 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines essential terms applicable to the Medical Imaging profession and regulatory process.

(b) The necessity of this administrative regulation: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate licensees other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of medical imaging technologists, radiation therapists, radiologist assistants and limited x-ray machine operators; examinations; standards of education and experience; curricula standards for institutions teaching persons to perform medical imaging and radiation therapy procedures; issuance, renewal, and revocation of licenses; the establishment of a reasonable schedule of fees and charges to be paid by individuals for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation defines terms used in 201 KAR Chapter 46.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes definitions used in the requirements for practice of medical imaging, radiation therapy and related occupations.

(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: (i) amends the definitions of direct supervision and indirect supervision; (ii) delete the definition of the term "independent course of study"; and (iii) add a definition for "medical imaging" and "therapeutic procedures".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address other changes in the regulations filed with this regulation, which includes the elimination of the independent study course.

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all "terms of art" used in the regulation has an appropriate definition.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required. The amendment merely defines the terms for 201 KAR Chapter 46.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensees benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending 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 licenses 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: 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 applied as the regulation is applicable 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 Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation: KRS 311B.010 to 311B.190

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

201 KAR 46:020. Fees.

RELATES TO: KRS 311B.050, 311B.100(2), 311B.110, 311B.120, 311B.130, 311B.140, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations. KRS 311B.120 requires the board to promulgate administrative regulations to establish fees and penalties. This administrative regulation establishes fees for the licensure of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, and a limited x-ray machine operator.

Section 1. Initial Application and License Fee. A non-refundable initial application and license fee shall be \$100.

Section 2. Renewal License Fee. A non-refundable renewal fee shall be fifty (50) dollars per year.

Section 3. Temporary Application and License Fee. A non-refundable fee for a temporary license shall be \$100.

Section 4. Provisional Training License Fee. A nonrefundable fee for a provisional training license for a radiation therapist and a nuclear medicine technologist shall be fifty (50) dollars per twenty-four (24) month training period.

Section 5. Temporary Limited X-ray Machine Operator Application and License Fee. A non-refundable, non-transferrable fee for a license shall be \$100.

Section 6. Duplicate License Fee. A nonrefundable fee for a duplicate license shall be twenty (20) dollars.

Section 7. Reinstatement Fee. A reinstatement fee shall be \$100.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Section 8. Name Change Fee. A nonrefundable fee for a new printed license with a name change shall be twenty (20) dollars.

Section 9. Limited X-ray Machine Operator Examination Fee. A nonrefundable fee for the limited x-ray machine operator examination shall be \$150.

Section 10. ~~Home Study Course Fee. A non-refundable administrative fee for the independent study course for a limited x-ray machine operator shall be \$500.~~

Section 11. ~~Insufficient Funds Fee. A fee for returned check or denied online banking (ACH) payment shall be fifty (50) dollars.~~

Section 11. ~~Written Verification of Qualifications Fee. The fee for completion of written verification documents shall be twenty-five (25) dollars per document.~~

Section 12. ~~Continuing Education Approval Fee. (1) Individual continuing education program fee shall be ten (10) dollars.~~

(2) Annual sponsoring institution fee shall be \$100.

Section 13. ~~Late Fee. (1) An individual who fails to renew a license by the expiration date shall be assessed a late fee according to the following schedule based upon the expiration date:~~

- (a) One (1) to five (5) days late - no penalty;
 - (b) Six (6) to thirty (30) days late - twenty (20) dollars per calendar day; and
 - (c) More than thirty (30) days late - \$750 flat fee.
- (2) The late fee, if applicable, shall be in addition to the renewal fee required by Section 2 of this administrative regulation, and the reinstatement fee required by Section 7 of this administrative regulation.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. 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 December 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be assessed to licensees and applicants.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the

authorizing statute gives the board the ability to promulgate regulations establishing fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the fees to be assessed from applications, renewals, late filings, reinstatement, name change, and various other programs and services provided by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the fee for the independent study program for limited x-ray operators.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary since the board is eliminating the independent study program for limited x-ray operators.

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the board in ensuring only competent individuals are operating radiation-producing equipment. This regulation will notify the public of the late fee schedule for untimely renewal applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment to the administrative regulation establishes no new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations place applicants and licensees on clear notice of the fees associated with licensure and procedures.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending 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 established by this regulation and 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: No increase in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment to the administrative regulation establishes new fees and increases other fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.190

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 home study program generated \$28,200.00 for FYE June 30, 2017. Elimination of the program will result in a decrease in the board's revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)**

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

RELATES TO: 311B.080

STATUTORY AUTHORITY: KRS 311B.050(2), 311B.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Kentucky Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.080 requires the board to recognize and enforce national practice standards and scopes of practice. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy for diagnostic and therapeutic purposes while under the supervision of a licensed practitioner of the healing arts.

Section 1. Applicability. A licensee shall only perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision as specified by a licensee's practice standards, by a licensee's scope of practice, or in the ACR-AAPM Technical Standard for the Management of the Use of Radiation in Fluoroscopic Procedures as listed in Section 3 of this administrative regulation.

Section 2. If a licensee's practice standards, a licensee's scope of practice, or the ACR-AAPM Technical Standard for the Management of the Use of Radiation in Fluoroscopic Procedures fails to specify who may provide direct or indirect supervision, a licensee shall only perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision of a licensed practitioner of the healing arts.

Section 3. Practice Standards. A licensee shall perform according to practice standards of the discipline for which the licensee holds a credential, as established by the American Society of Radiologic Technologists (ASRT), the American College

of Radiology (ACR), the American Association of Physicists in Medicine (AAPM), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference. These standards include the:

- (1) Radiography Practice Standards;
- (2) Nuclear Medicine Technologist Scope of Practice and Performance Standards;
- (3) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards;
- (4) Scope of Practice for the Nuclear Medicine Advanced Associate;
- (5) Radiation Therapy Practice Standards;
- (6) Bone Densitometry Practice Standards;
- (7) Cardiac Interventional and Vascular Interventional Technology Practice Standards;
- (8) Computed Tomography Practice Standards;
- (9) Limited X-ray Machine Operator Practice Standards;
- (10) Mammography Practice Standards;
- (11) Radiologist Assistant Practice Standards;
- (12) ACR ASRT Joint-Policy Statement-Radiologist Assistant: Roles and Responsibilities;[and]
- (13) ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures;
- (14) The American Registry of Radiologic Technologists' Code of Ethics; and
- (15) The Nuclear Medicine Technology Certification Board's Code of Ethics.

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

- (a) "Radiography Practice Standards", revised June 25, 2017[26, 2016];
- (b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", June 2016;
- (c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;
- (d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009;
- (e) "Radiation Therapy Practice Standards ", revised June 25, 2017[26, 2016];
- (f) "Bone Densitometry Practice Standards", revised June 25, 2017[26, 2016];
- (g) "Cardiac Interventional and Vascular Interventional Technology Practice Standards", revised June 25, 2017[26, 2016];
- (h) "Computed Tomography Practice Standards", revised June 25, 2017[26, 2016];
- (i) "Limited X-ray Machine Operator Practice Standards", revised June 25, 2017[26, 2016];
- (j) "Mammography Practice Standards", revised June 25, 2017[26, 2016];
- (k) "Radiologist Assistant Practice Standards", revised June 25, 2017[26, 2016];
- (l) "ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities", May 2003;
- (m) "ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures", revised 2013 (Resolution 44);
- (n) The American Registry of Radiologic Technologists' Code of Ethics;
- (o) The Nuclear Medicine Technology Certification Board's Code of Ethics; and
- (p) The Practice Standards for Medical Imaging and Radiation Therapy, Glossary, (June 25, 2017); and
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:
 - (a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, <https://www.asrt.org/main/standards-regulations/practice-standards/practice-standards>[<http://www.asrt.org/main/standards-regulations/practice-standards>];
 - (b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, <http://www.snmmi.org>, or

(c) The American Registry of Radiologic Technologists' Code of Ethics, 125 Northland Drive, Saint Paul, Minnesota 55120, <https://www.art.org/docs/default-source/Governing-Documents/code-of-ethics.pdf?sfvrsn=10>;

(d) The Nuclear Medicine Technology Certification Board, 3558 Habersham at Northlake, Building I, Tucker, Georgia 30084, <https://www.nmtcb.org/policies/ethics.php>;

(e) The Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. 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 December 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the practice standards, scopes of practice, and ethical standards for individuals licensed by the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the practice standards, scopes of practice, and ethical standards of licensees who perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute giving the board the ability to promulgate regulations to carry out and enforce the provisions of KRS 311B.050(3), which authorizes the board to issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the practice standards, scopes of practice, and ethical standards of licensees who perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes. It assists in knowing the expectations of their scope of practice.

(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: (i) adds the Code of Ethics for the American Registry of Radiologic Technologists and the Nuclear Medicine Technology Certification Board; (ii) the glossary for; and (iii) updates various standards of practices.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the licensees

are held to the most up-to-date standards of practice and code of ethics in the industry.

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the board employing the same standards of practice and code of ethics that is required of every licensee in Kentucky that is required of the national credentialing agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,000 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to comply with the standards of practice and code of ethics that he or she is already required to comply with in accordance with their national certification.

(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): Qualified individuals will be able to be licensed and maintain previously issued licenses.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending 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 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311B.050, 311B.080

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? None

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)**

201 KAR 46:081. Limited X-Ray machine operator.

RELATES TO: KRS 311B.020, 311B.150, 311B.100(2), 311B.110, 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.100(2), 311B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to establish the procedures for the issuance and renewal of a license. KRS 311B.100(2) and KRS 311B.110(6) require the board to promulgate administrative regulations to establish the qualifications for a limited x-ray machine operator (LXMO). This administrative regulation establishes the requirements for the licensure of a limited x-ray machine operator.

Section 1. Applicability. (1) This administrative regulation shall apply to individuals who perform limited diagnostic radiography while under the direct supervision ~~or [while training and] indirect supervision [thereafter]~~ of a licensed practitioner of the healing arts ~~[—a licensed limited x-ray machine operator, or a licensed radiographer]~~.

(2) Limited diagnostic radiography shall include routine chest and thorax, cranium, extremity, podiatric, vertebral column radiography, and bone densitometry procedures.

Section 2. Limited Licensee Employment Prohibition. An individual who holds a limited license shall not be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopy, mammography, computed tomography, magnetic resonance imaging, bedside radiography, nuclear medicine, positron emission tomography, or radiation therapy procedures are performed.

Section 3. ~~Pathway~~[Pathways] to the Limited X-ray Machine Operator License. An applicant shall complete an approved postsecondary educational program that meets the American Society of Radiologic Technologists (ASRT) Limited X-Ray Machine Operator Curriculum requirements. An individual~~[Individuals]~~ shall complete~~[this requirement by either:~~

(1) a formal education program for limited x-ray machine operators approved by the board]; ~~or~~

(2) An independent study program for limited x-ray machine operators approved by the board].

Section 4. Application for Temporary Limited X-ray Machine Operator License. ~~[Issuance of a temporary limited license shall be dependent upon the educational pathway selected by the applicant.]~~ (1) An applicant who has completed a formal educational program shall submit:

(a) A completed and signed application Form KBMIRT Form 5;

(b) A nonrefundable, nontransferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020, Section 5;

(c) The satisfactory results of a criminal background check completed within the past six (6) months in state of residence and

employment and any other state of residence and employment within the past five (5) years; and

(d) A copy of a government-issued photo ID.

~~(2) [An applicant selecting the independent study program pathway shall receive a temporary license upon completion of the required coursework. As part of the application process for the independent study pathway, an applicant shall submit:~~

~~(a) A completed and signed application KBMIRT Form 5;~~

~~(b) A completed and signed application KBMIRT Form 5A;~~

~~(c) A non-refundable, non-transferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020, Section 5;~~

~~(d) The satisfactory results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;~~

~~(e) A copy of a government-issued photo ID;~~

~~(f) A copy of the Cabinet for Health and Family Services radiation producing machine registration card of their employer;~~

~~(g) A copy of his or her high school diploma or equivalent; and~~

~~(h) A home study course fee for an independent study course as mandated by 201 KAR 46:020, Section 10.~~

~~(3) The temporary limited x-ray machine operator license shall expire:~~

~~(a) Two (2) years from the date of enrollment in the independent study program;~~

~~(b) one (1) year from date of issuance for graduates of formal educational programs.~~

~~(3) [(4)] Upon completion of the limited x-ray machine operator training program, individuals shall:~~

~~(a) Apply for the limited scope radiography exam; and~~

~~(b) Submit the nonrefundable, nontransferrable limited x-ray machine operator examination fee as mandated in 201 KAR 46:020, Section 9.~~

~~(4) [(5)] If a temporary licensee has not successfully passed the American Registry of Radiologic Technologists (ARRT) administered limited scope radiography exam prior to the expiration date of the temporary license, the licensee shall cease to perform radiographic procedures. The licensee remains eligible to sit for the exam, however, the individual shall not perform radiographic procedures. Upon successful completion of the exam, the individual shall submit:~~

~~(a) A limited x-ray machine operator license application using KBMIRT Form 4; and~~

~~(b) An initial application and license fee as mandated in 201 KAR 46:020, Section 1.~~

~~(6) If a temporary licensee has successfully passed the ARRT administered limited scope radiography exam prior to the expiration date of the temporary license [for the selected educational pathway], the licensee shall be issued a limited x-ray machine operator license which shall expire on the last day of the licensee's birth month.~~

Section 5. The issued license shall identify the licensee as a limited x-ray machine operator. The license shall also identify the category as general, bone densitometry, or podiatry.

Section 6. ~~[Employer Responsibility for Students Enrolled in the Independent Study Program for Limited X-Ray Machine Operators. Pursuant to Section 8 of this administrative regulation, clinical education shall be obtained at the student's place of employment, an alternate facility, or a combination. The employer shall be responsible for providing or arranging for the required clinical education and for providing the direct or indirect supervision of the student by a licensed practitioner of the healing arts, a licensed limited x-ray machine operator, or a licensed radiographer as required by the student's level of competency. Clinical education shall begin only after the student has successfully completed the required coursework of the textbook and has received a temporary license issued by the board.]~~

~~Section 7.] Curricular Standards for Formal Educational Program. This administrative regulation applies to institutions offering a postsecondary program for limited x-ray machine operators. Programs shall:~~

(1) Meet the curricular standards established by the American Society of Radiologic Technologists (ASRT);

(2) Include a minimum of 240 classroom hours of didactic instruction and 360 clinical hours of education which shall include supervised practice and demonstration of clinical competency;

(3) Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum;

(4) Provide a structured curriculum with clearly written course descriptions, lesson plans, and objectives;

(5) Provide an adequate faculty, which shall be qualified through academic preparation or experience to teach the subjects assigned;

(6) Have a program director who is a licensed radiographer with a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience;

(7) Provide a licensee-to-student ratio consistent with professional educational guidelines in the appropriate field of practice;

(8) Provide appropriate facilities, sufficient volume, and a variety of diagnostic exams to properly conduct the educational program;

(9) Prohibit students from applying radiation to human beings for diagnostic purposes until they have obtained practical experience and have had their performance evaluated as satisfactory by the program faculty;

(10) Provide direct or indirect supervision by a licensed practitioner of the healing arts or a licensee as required by the student's level of competency;

(11) Prohibit students from administering radiation to a human being unless under direct or indirect supervision as required by the student's level of competency;

(12) Maintain records of each student's attendance, grades, clinical competency, and subjects completed;

(13) Designate a radiation safety officer; and

(14) Permit site inspections by the board's representative.

Section 7.[8.]~~[Curricular Standards for Independent Study Program. (1) The general limited x-ray machine operator independent study program shall:~~

~~(a) Be completed within twenty-four (24) months;~~

~~(b) Include the following subjects:~~

~~1. Human structure and function;~~

~~2. Medical terminology;~~

~~3. Radiation protection;~~

~~4. Radiation biology;~~

~~5. Medical ethics and law;~~

~~6. Equipment operation and maintenance;~~

~~7. Image production and evaluation;~~

~~8. Image processing;~~

~~9. Radiographic procedures;~~

~~10. Patient positioning; and~~

~~11. Patient care; and~~

~~(c) Include clinical education consisting of a minimum of fifty (50) radiographic procedures in each of the following areas:~~

~~1. Chest;~~

~~2. Extremities; and~~

~~3. Musculoskeletal.~~

~~(2) The limited podiatry x-ray machine operator independent study program shall:~~

~~(a) Be completed within twenty-four (24) months;~~

~~(b) Include the following subjects:~~

~~1. Human structure and function;~~

~~2. Medical terminology;~~

~~3. Radiation protection;~~

~~4. Radiation biology;~~

~~5. Medical ethics and law;~~

~~6. Equipment operation and maintenance;~~

~~7. Image production and evaluation;~~

~~8. Image processing;~~

~~9. Radiographic procedures;~~

~~10. Patient positioning; and~~

~~11. Patient care; and~~

~~(c) Include clinical education consisting of a minimum of fifty (50)~~

~~radiographic procedures of the feet and ankles.~~

~~(3) The limited bone densitometry x-ray machine operator independent course of study shall:~~

~~(a) Be completed within twenty-four (24) months;~~

~~(b) Include the following subjects;~~

~~1. Human structure and function;~~

~~2. Medical terminology;~~

~~3. Radiation protection;~~

~~4. Radiation biology;~~

~~5. Medical ethics and law;~~

~~6. Equipment operation and maintenance;~~

~~7. Image production and evaluation;~~

~~8. Image processing;~~

~~9. Radiographic procedures;~~

~~10. Patient positioning;~~

~~11. Patient care; and~~

~~12. Equipment Specific training; and~~

~~(c) Include clinical education consisting of a minimum of fifty (50) bone densitometry procedures.~~

Section 9.[10.] Approved Radiographic Procedures for the Limited X-ray Machine Operator. An individual who holds a limited license is limited to performing the procedures authorized for his or her license as described in subsections (1), (2), and (3) of this section.

(1) An individual holding a general limited x-ray machine operator license shall perform only the following:

(a) Radiography of the thorax, lungs and ribs;

(b) Radiography of the skull and facial structures;

(c) Radiography of the upper and lower extremities, including the pectoral girdle and the hips and pelvis; and

(d) Radiography of the cervical, thoracic, and lumbar spines.

(2) An individual holding a limited podiatry x-ray machine operator license shall perform radiographic procedures on the foot and ankle only.

(3) An individual holding a limited bone densitometry x-ray machine operator license shall perform bone densitometry radiographic procedures only.

(4) A limited x-ray machine operator shall comply with the Limited X-ray Machine Operator Practice Standards as incorporated by reference in 201 KAR 46:040, Section 15.

Section 8.[10.] Continuing Education Requirements. Licensees shall complete and document twelve (12) hours of continuing education biennially as required by 201 KAR 46:060. A minimum of six (6) hours shall be related to radiation safety or medical imaging.

Section 9.[14.] Continuing Education Audit Process. (1) The board shall select a sample of licensees to audit for continuing education compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain his or her personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall complete KBMIRT Form 8, as incorporated by reference in 201 KAR 46:060, and provide the board with a copy of his or her certificates or records of completion.

(5) Failure to comply with an audit may result in nonrenewal, suspension or revocation of license.

Section 10.[12.] Renewal of License. A licensee shall renew annually prior to the expiration of his or her current license, which is the last day of the licensee's birth month, by:

(1) Completing KBMIRT Form 6; and

(2) Submitting the Renewal License Fee in accordance with 201 KAR 46:020, Section 2.

Section 11.[13.] Reinstatement of Lapsed License. A licensee who has allowed the license to lapse for more than one (1) month but less than twelve (12) months is eligible to be reinstated upon submission of KBMIRT Form 6, documentation of twelve (12) hours of continuing education, and the payment of reinstatement

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

and renewal fees pursuant to 201 KAR 46:020, Sections 2 and 7. A licensee whose license has lapsed for more than twelve (12) months shall:

(1) Successfully pass the ARRT limited scope radiography examination;

(2) Submit a completed and signed application KBMIRT Form 4;

(3) Submit a nonrefundable initial application and license fee as mandated in 201 KAR 46:020, Section 1;

(4) Submit satisfactory results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(5) Submit a copy of a government-issued photo ID.

Section ~~12~~[44:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 4, "Limited X-ray Machine Operator License Application", November 2017[April 2015];

(b) KBMIRT Form 5, "Limited X-ray Machine Operator Temporary License Application", November 2017[April 2015];

~~(c) KBMIRT Form 5A, "Limited X-ray Machine Operator Independent Study Course Application", April 2015; and~~

~~(d) KBMIRT Form 6, "Limited X-ray Machine Operator Renewal Application", November 2017[March 2015].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. 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 December 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements for licensure of a limited x-ray machine operator or radiographer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow establish the standards and qualifications for licensure of a limited x-ray machine operator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 311B authorizes the board to determine and establish the standards and qualifications for licensure of a limited x-ray machine operator or radiographer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation standards and qualifications for licensure of a limited x-ray machine operator or radiographer.

(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 revises 201 KAR 46:081 will eliminate the independent study program for limited x-ray machine operators and update the forms.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is because the board has found the overwhelming majority or applicants never complete the program and the examination pass rate is extremely low.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 311B authorizes the board to determine and establish the standards and qualifications for licensure of a limited x-ray machine operator or radiographer.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that only properly educated and trained individuals will operate radiation producing equipment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the regulation abolishes the independent study 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 no impact on a licensee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a limited x-ray license will know the requirements for licensure.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending 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 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. 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? Board of Medical Imaging and Radiation Therapy.

(2) Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: 311B.050(2) and (7), KRS 311B.160, and KRS 311B.170.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 5:010. License agent applications and agreements~~[selection criteria]~~.

RELATES TO: KRS 150.175~~[150.195]~~

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 authorizes the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a department~~[POS]~~ license agent.

~~Section 1.[Application of Administrative Regulation. This administrative regulation applies to license agents other than those who sell licenses via the Internet and telephone per 301 KAR 5:050.~~

~~Section 2.] License Agent Applications and Agreements. (1) Before receiving authorization to serve as license agents, businesses or governmental agencies shall:~~

~~(a) Complete and submit a License Agent Application Form;~~

~~(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the appropriate agent agreement; and~~

~~(c) Complete an Electronic Funds Transfer Request Form.[Pay a security deposit as required in the agent agreement; and~~

~~(d) Sign an electronic fund transfer authorization form] which authorizes the department to make electronic fund transfers from a bank account into which the agent shall deposit the proceeds from transactions.~~

~~(2)[1. Agents with multiple business locations wishing to consolidate payments shall make suitable arrangements with the department.~~

~~2.] State agencies serving as license agents shall remit payment through the state accounting system.~~

~~(3)[(2)] The department shall appoint as agents businesses that have:~~

~~(a) A valid federal identification number;[and]~~

~~(b) Except for out-of-state agents, a Kentucky sales tax number; and[.]~~

~~(c) For out-of-state agents, businesses that post a surety bond of \$5,000.~~

~~Section 2.[Out-of-state Agents. The department may grant license agent status to business locations outside Kentucky if the out-of-state agent:~~

~~(1) Was the agent of a county clerk; and~~

~~(2) Posts a surety bond as stipulated in the out-of-state agent agreement.~~

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

~~(a) License Agent Application Form, 1995;~~

~~(b) Electronic Fund Transfer Authorization Form, 1995;~~

~~(c) License Agent Contractual Agreement, 2018 edition[1995]; and~~

~~(d) Governmental License Agent Contractual Agreement, 2018~~

~~edition[1995; and~~

~~(e) Out-of-state Agent Agreement, 1995].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the~~[Division of Fiscal Control;]~~ Department of Fish and Wildlife Resources, #1 Sportsman's Lane~~[Game Farm Road]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through December 31, 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 application procedures for becoming a department license agent.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements of a department license agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department.

(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 statute by providing minimum criteria for a license agent 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 removes the security deposit previously required for license terminals and paper provided by the department, clarifies the responsibilities of license agent applicants, phases out out-of-state agents, and updates the contractual agreements for license agents and government agencies as incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the regulation to reflect newer technology through removal of department-provided license terminals, security deposits, and the addition of new contractual agreements with license vendors.

(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: License agents throughout the state will be affected. Currently, there are approximately 750 license agents 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: New license agents will no longer have to pay a security deposit for terminals and license paper, but they will need to complete the new License Agent Contractual Agreement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): License agents will need to supply their own computer and printer in order to deliver licenses and permits to customers. That cost will vary depending on the license agent.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents will no longer be required to pay a security deposit for department terminals, and they will benefit from clarified requirements in the regulation and contractual agreement.

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

(a) Initially: There will be no additional cost to the department initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the state Game and Fish fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not directly increase any fees; however, license agents will be required to supply their own computer, printer, and paper in the future.

(9) TIERING: Is tiering applied? Tiering was not applied, as all license agents are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Division of Administrative Services will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195 authorizes the department to promulgate administrative regulations governing the issuance of licenses and permits.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be an additional cost to administer this

program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be an additional cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.175[150.195], 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195[44] authorizes the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation establishes the requirements for issuing licenses, ~~and~~ electronically reporting license sale data and license revenue, ~~and details the procedures for~~ suspending or revoking license agent status; ~~and specifies the methods for appealing a suspension or revocation of agent status.~~

Section 1. Issuing Licenses. (1) A license agent ~~shall~~ may issue a license ~~or permit~~ to a person who ~~completes the registration process with~~ provides the agent ~~and pays the appropriate license or permit fee pursuant to 301 KAR 3:022~~ with:

(a) His date of birth; and

(b) An identification number, which shall be:

1. A driver's license number;

2. A state identification card number;

3. A Social Security number; or

4. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from an unexpired disability authorization card issued to the person to whom the license is issued and proof of Kentucky residency; or

5. If the purchaser is age sixty-five (65) or over and buying a senior/disabled license, proof of age and Kentucky residency.

(2) A license agent shall not knowingly enter false information while processing a license. ~~[(3) A license agent may issue a junior hunting license if the parent or guardian of the license recipient signs the license at the time of purchase.]~~

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Fifty (50) cents for each Peabody ~~or Addington Enterprises-Robinson Forest~~ permit issued pursuant to 301 KAR 4:100; ~~and~~ or 301 KAR 4:200.

(b) Fifty (50) cents each for other transactions.

(2) A license agent shall promptly deposit transaction fees, less the commissions ~~established~~ described in subsection (1) of this section, into the bank account ~~established in~~ required by 301 KAR 5:010.

(3) A license agent may elect to print, on any license or permit issued, a coupon or advertisement, pursuant to a department sponsorship established in KRS 45A.097, in lieu of retaining the applicable commissions established in subsection (1) of this section.

Section 3. ~~Uploading License Sale Information.~~ (1) ~~The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.~~

~~(2) A license agent shall:~~

~~(a) Ensure his POS device is connected to a telephone line on the date of the scheduled upload;~~

~~(b) Leave the POS device connected to the telephone line until~~

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

the upload has been completed;

~~(c) Retain the receipts printed with each transaction until notified by the department; and~~

~~(d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.~~

Section 4-] Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent with a schedule of dates when[an] electronic fund transfers[transfer from his bank account] will be initiated.

~~(2)[At the close of banking hours] On the day of a[the] scheduled electronic fund transfer, a license agent shall have sufficient funds in the[his] account to cover the amount of the transfer.~~

~~(3) A license agent shall contact the department prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.~~

Section 4[5]. Voiding Licenses. (1) A license agent may void a license if:

(a) The license does not print correctly; or

(b) After the license is printed, the purchaser:

1. Discovers that the issued license is incorrect[he was issued an incorrect license];

2. Will not pay for the license; or

3.[Otherwise] Refuses to accept the license.

(2) An agent shall:

(a) Ensure that a license established in subsection (1) of this section is voided in the system; and

(b) Destroy all paper copies of the voided license or permit[retain all voided licenses and return them to the department as stipulated in Section 6 of this administrative regulation].

Section 5[6]. Materials Retained and Returned to the Department. (1) A license agent shall retain:

(a) A voided license;

(b) Kentucky Migratory Bird Harvest Information Program Form as referenced in 301 KAR 5:040; and

(c) Ruined or unusable license stock.

(2) A license agent shall return the materials listed in this section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license returned later than (30) days after the upload in which the void was reported.

Section 7-] Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years[year] a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1.[The agent agreement;

2.] KRS 150.195; or

2.[3-] An administrative regulation adopted pursuant to KRS 150.195.

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits[for the second time] an offense for which the license agent[he] has been previously suspended;

(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing his agent bank account;

(d) Closes his business seasonally without notifying the licensing section supervisor in writing by surface mail, fax or e-mail and settling his account; or

(e) Knowingly issues a license containing false information[; or

~~(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock].~~

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that the agent's[his] status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.

(4) A suspension or revocation shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent shall:

~~(a)[Surrender upon demand the POS devices and license stock in his possession to an authorized agent of the department;~~

~~(b)] Allow the department access to financial records dealing with license sales; and~~

(b)[(e)] Immediately pay all funds owed to the department.

Section 6[8]. Appeal of Suspension or Revocation of Agent Status. (1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.

(3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B.

(4) The department's commission shall issue a final order pursuant to KRS Chapter 13B[:

~~(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and~~

~~(b) Schedule a hearing to be held:~~

~~1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or~~

~~2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.~~

~~(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.~~

~~(4) At the hearing, the license agent:~~

~~(a) May be represented by counsel; and~~

~~(b) May present evidence which he feels should be considered, including the calling of witnesses.~~

~~(5) The department may present evidence and call witnesses to support the suspension or revocation.~~

~~(6) The commission shall make its decision by majority vote.~~

~~(7) An agent may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.~~

~~(8) The department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B].~~

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 December 31, 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 issuing licenses and permits, electronically reporting license sale data and license revenue, and for suspending or revoking license agent status.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the minimum requirements for the license agent registration process, license agent commissions and depositing of license funds, and for suspending or revoking license agent status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate administrative regulations governing the issuance of licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by establishing minimum requirements for license agents wishing to sell department licenses and 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: This amendment will update the delivery of license and permits using a new web-based license system. The old language dealing with the terminal-based system and its requirements needed to be removed and replaced. The amendment also covers the capabilities of the new system as well as addressing the license agent commission process.

(b) The necessity of the amendment to this administrative regulation: It is necessary for the department to update the delivery of license and permits to the public by incorporating new and updated technology and establishing the requirements for the new system.

(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: Department license agents throughout the state will be affected by this administrative regulation. Currently, there are approximately 750 license agents 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:

License agents will be required to modify their public delivery platform by using new technology established in a web-based, computer generated license system rather than using the old point-of-sale terminal-based system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): License agents will be required to use their own computer with internet capability and their own paper. The cost is dependent on their initial investment in their computer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents will gain the ability to advertise their business by generating a coupon or other incentive through a department sponsorship.

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

(a) Initially: There was a minimal initial cost, as the system was designed, developed, and implemented by current agency staff.

(b) On a continuing basis: By providing the agents with flexibility via a sponsorship coupon or advertisement platform within the system, the department will actually reduce costs associated with the administration of this program on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the state Game and Fish fund.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all license agents are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Administrative Services Division 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 150.195

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unlikely that this amendment will generate additional revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment may generate some additional revenue in subsequent years if license agents waive their applicable license and permit commissions in lieu of coupons or department sponsorships.

(c) How much will it cost to administer this program for the first year? It will not cost the department any additional funds to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? It will not cost the department any additional funds to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:280. Risk and needs assessment.

RELATES TO: KRS 196.035, 197.020, 439.265, 439.3101, 439.3104, 439.3105, 439.331, 439.348, 439.480, 446.010, 533.030
STATUTORY AUTHORITY: KRS 197.020, 439.3101, 439.3104, 439.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 197.020(1)(d), 439.3101(2)(a), 439.3104(1) and (2), and 439.331(1) require the Department of Corrections to promulgate an administrative regulation for the administration of a validated risk

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

and needs assessment to assess the criminal risk factors and correctional needs of all inmates and offenders upon commitment to the department. This administrative regulation establishes the validated risk and needs assessment requirements for assessing the criminal risk factors and correctional needs of inmates and offenders.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for risk and needs assessment," November 15, 2017~~[July 10, 2012]~~, are incorporated by reference. These policies and procedures include:

29.1 Risk and Needs Assessment (Amended 11/15/17~~[7/10/12]~~)

29.2 Case Planning (Amended 11/15/17~~[7/10/12]~~)

29.3 Risk and Needs Assessment Administration, Training, and Quality Assurance (7/10/12) (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: November 14, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to risk and needs assessment and case management of offenders.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS197.020(1)(d), 439.3101(2)(a), 439.331(1), 439.3104(1) and (2) and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes policies and procedures that govern the risk and needs assessment and case planning of offenders to comply with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Department of Corrections employees and to offenders for risk and needs assessments and case planning.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the procedures concerning risk and needs assessments and case planning in part to better address reentry issues and changes in the assessment tool used.

(b) The necessity of the amendment to this administrative

regulation: To update procedures for risk and needs assessment and case planning for which regulations are required by the authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require risk and needs assessments for offenders.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and offenders information concerning the updates to the procedures for risk and needs assessment and case planning that are required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately 1000 employees of the Department of Corrections, 15,000 inmates committed to the Department of Corrections, and 12,000 parolees and 29,000 probationers under community supervision of the Department of Corrections.

(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: Department of Corrections staff will follow the provisions of the regulation for risk and needs assessment and case planning of offenders. Offenders will be able to understand the way that risk and needs assessments will be handled by staff, and will gain a better understanding of their criminogenic needs. Use of the case plan will assist offenders in complying with their supervision and programming while incarcerated. The risk and needs assessment and corresponding case plan will assist employees to better evaluate and address the offenders' areas of risk, resulting in more effective use of staff time and department resources to most effectively attack offender's risk of recidivism.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to administer the risk and needs assessment tool. The case management plan requires software updates, included in \$1.2 million allocated to update the Department of Corrections offender management system per HB 463 implementation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Corrections will allocate referral resources, interventions, and programming space according to nationally set best practices. Department employees will benefit from a more streamlined assessment and case management process, allowing staff to identify higher risk offenders and appropriate resources likewise, making more productive use of staff time and Department resources. Additionally, offenders will benefit from more effective assessment, case monitoring, and therefore reduced recidivism.

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

(a) Initially: Initial cost of training staff to conduct risk and needs assessment: \$11,287.50 paid from the Department of Corrections budgeted funds for the biennium to train master trainers. In-house training for the case management plan includes 963 employees, with the only cost to the Department for employee travel and per diem. Changing the assessment tool results in a costs savings for that portion of the costs, because there is no recurring charge for continued access to the previous corporation's system.

(b) On a continuing basis: On-going costs for the risk and needs assessment includes the cost of training new line staff. Costs to the Department include housing costs, travel reimbursement and per diem.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is from the Department of Corrections budgeted funds for the biennium.

(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 an increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 197.020(1)(d), 439.3101(2)(a), 439.331(1), 439.3104(1) and (2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? Initial cost of training staff to conduct risk and needs assessment: \$11,287.50 paid from the Department of Corrections budgeted funds for the biennium to train master trainers. In-house training for the case management plan includes 963 employees, with the only cost to the Department for employee travel and per diem. Changing the assessment tool results in a costs savings for that portion of the costs, because there is no recurring charge for continued access to the previous corporation's system.

(d) How much will it cost to administer this program for subsequent years? Additional costs revolve around continued offender assessments and staff training. It is estimated that approximately 300 new staff members will require training annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.397, 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council (KLEC) to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements

under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification. KRS 15.440 allows the Council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply:

(a) The name of the entity that completed the analysis;

(b) The date on which the analysis was completed;

(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned, and the agency shall resubmit an application for consideration of its[their] job task analysis and associated agency testing.

(b) The KLEC office Recommendation. Within thirty (30) days of its[their] receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(c) KLEC Review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its[their] recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and

2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) The KLEC office shall receive a completed KLEC Form Q or KLEC Form tele-Q from each agency participating in certification[as of December 1, 1998]

prior to any applicant testing. If an agency initiates participation in certification ~~after December 1, 1998~~, KLEC Form Q or KLEC Form tele-Q shall be submitted to the KLEC office. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q ~~process~~ within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall mail a notification to the agency that ~~the form is either~~:

(a) ~~The form~~ Has been received and is complete; or
(b) ~~The form~~ Is incomplete and the specific information which shall be supplemented in order to process the form. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall mail a notice to the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Peace Officer Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward ~~its~~~~their~~ recommendation to KLEC for final review. Within sixty (60) days ~~of~~~~their~~ receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and
 2. Within thirty (30) days of receipt of the notice of rejection.
- (b) The notice of appeal shall be submitted:
1. On KLEC Form S; and
 2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

(5) An agency may request certification for a peace officer that has completed a non-DOCJT law enforcement basic training by submitting KLEC Form B - Basic Training Previously Completed (non-DOCJT) to the KLEC Office.

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this

section shall be followed. (1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, ~~using~~~~utilizing~~ the KLEC Form H-1 Background Investigation and Form H-2 Personal History Statement:

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The agency shall submit one (1) completed FD 258 FBI Fingerprint Card to the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d) shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
 - a. Integrity;
 - b. Conscientiousness; and
 - c. Vocational preference;

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014~~[Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association]~~;

(c)1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:
 - a. "Suitable";
 - b. "Not suitable"; or
 - c. Borderline; and

3. If an applicant is classified as borderline or not suitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and

(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014~~[Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association]~~.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the

following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

- (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

- (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and
- (iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points - Recruit shall complete in less than 975 (16:15) seconds.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve at least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions

established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain an overall score of fifty (50), the examinee may attempt the test battery again, in its entirety. This shall be considered a second test administration and not be considered a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status in its entirety.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the precertification test score requirements, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;

b. Sit-ups. Eighteen (18) sit-ups in one (1) minute;

c. 300 meter run in sixty-five (65) seconds;

d. Push-ups. Twenty-five (25) push-ups; and

e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status: training graduation test:

a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; and

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:

1. THC (marijuana), 20 ng/mL, 5 GC/MS;

2. Amphetamines, to include Methamphetamine and Methylenedioxymethamphetamine, 300 ng/mL, 100 GC/MS;

3. Cocaine, 150 ng/mL, 50 GC/MS;

4. Opiates, 300 ng/mL, 150 GC/MS;

5. Barbiturates, 200 ng/mL, 100 GC/MS;

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

6. Phencyclidine (PCP), 25 ng/mL, 25 GC/MS;
7. Methadone, 300 ng/mL, 100 GC/MS;
8. Oxycodone (Oxycontin), 100 ng/mL, 100 GC/MS;
9. Benzodiazepines, 200 ng/mL, 100 GC/MS; and
10. Propoxyphene, 300 ng/mL, 200 GC/MS;

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant, using[utilizing] the questions in the KLEC Form I-3, Pre-employment Polygraph Background/Criminal Questions.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall submit affidavit or documentary proof of compliance upon request of the KLEC.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall mail to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC. (1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The

information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status: results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;

2. The number of certification applicants for the current and preceding year;

3. The actual revenue receipts of the governmental unit for the current and the preceding year; and

4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Certification shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail, to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, military, and federal law enforcement and telecommunications basic training. (1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for

Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the KLEC;

(b) The basic training course or academy is a single, stand alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;

2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

a. Basic officer skills;

b. Orientation for new police chiefs; or

c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) the peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he completed his basic training course or academy;

(c) The basic training course or academy is a single, stand alone course;

(d) A basic training credit of fifty (50) hours for each year of his full-time, peace officer service together with the basic training course hours allows compliance with the total hours required by KRS 15.440 or an administrative regulation modifying the hours; and

(e) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in (2)(a).

(3) [(2)] An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the KLEC; and

(b) The basic training course or academy was a single, stand-alone course.

(4) [(3)] An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

(a) Federal Bureau of Investigation;

(b) Bureau of Alcohol, Tobacco, and Firearms;

(c) Drug Enforcement Administration; or

(d) United States Secret Service.

(5) [(4)] The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) [(5)] An agency may request certification for a peace officer that has completed an out-of-state law enforcement basic training

by submitting for the applicant:

- (a) His certificate of completion of basic training;
- (b) His transcript of classes for basic training with individual class hours specified; and
- (c) Letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying that the applicant was employed in a full-time capacity as a peace officer for:
 - 1. At least one (1) year; or
 - 2. For three (3) or more years with at least one (1) year in the state in which he completed his basic training course or academy~~[KLEC Form B, Basic Training Previously Completed (non-DOCJT), to the KLEC Office].~~

Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall:

- (a) Keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority; and
- (b) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Psychological Examination Approval, indicating that the following testing procedures have been completed:
 - 1. Polygraph;
 - 2. Suitability screening;
 - 3. Drug screen; and
 - 4. Medical examination or history statement.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

- 1. The applicant has taken:
 - a. A controlled substance as prescribed by a physician; or
 - b. Any other medication, whether prescribed or not; and
- 2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to

terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 13. Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

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

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014~~[Part IV – Standards for Administrative Procedures", American Psychological Association, 1985];~~

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", June 2014;

(c) ~~"KLEC Form B - Basic Training Previously Completed (non-DOCJT)", January 19, 1999;~~

(d) "KLEC Form C - Grandfather Information", July 2006;

(e) ~~(f)~~ "(e)" "KLEC Form D - All Standards Met", June 2014;

(f) ~~(g)~~ "(f)" "KLEC Form D-1 - All Standards Met - Inactive to Active Status", June 2014;

(g) ~~(h)~~ "(g)" "KLEC Form E - Request for Certification for Exempt Officers, March 1, 1999;

(h) ~~(i)~~ "(h)" "KLEC Form F - Status Update", June 2014;

(i) ~~(j)~~ "(i)" "KLEC Form G-1 - Medical Examination Report", June 2014;

(j) ~~(k)~~ "(j)" "KLEC Form G-2 - Medical History Statement", June 2014;

(k) ~~(l)~~ "(k)" "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", June 2014;

(l) ~~(m)~~ "(l)" "KLEC Form H-1 - Background Investigation", June 2001;

(m) ~~(n)~~ "(m)" "KLEC Form H-2 - Personal History Statement", January 19, 1999;

(n) ~~(o)~~ "(n)" "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", June 2014;

(o) ~~(p)~~ "(o)" "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", June 2014;

(p) ~~(q)~~ "(p)" "KLEC Form I-3 - Pre-employment Polygraph Background/Criminal Questions", October 11, 2005;

(q) ~~(r)~~ "(q)" "KLEC Form J - JTA Submission", January 19, 1999;

(r) ~~(s)~~ "(r)" "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", July 2006;

(s) ~~(t)~~ "(s)" "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", July 2006;

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(s)(t) "KLEC Form L-1 - Code of Ethics", June 2014;
(t)(u) "KLEC Form L-2 - Canon of Ethics", June 2014;
(u)(v) "KLEC Form Q - Agency Submission Form", October 2006;
(v)(w) "KLEC Form Q-3 - Drug Screening Approval", July 2006;
(w)(x) "KLEC Form Q-4 - Polygraph Approval", July 2006;
(x)(y) "KLEC Form Q-5 - Psychological Examination Approval", July 2006;
(y)(z) "KLEC Form tele-Q - Agency Submission Form", June 2014;
(z)(aa) "KLEC Form R - Removal from Testing", January 19, 1999;
(aa)(bb) "KLEC POPS Form S - Notice of Appeal", January 19, 1999;
(bb)(cc) "KLEC Form T-1 - Medical Release - Phase I Testing", June 2014;
(cc)(dd) "KLEC Form T-1a - Physician's Medical Release Form", June 2014;
(dd)(ee) "KLEC Form T-2 - Liability Waiver - Phase I Testing", July 2001;
(ee)(ff) "POPS Form PT-1 - Physical Agility Test Session Report", January 2003;
(ff)(gg) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004; [and]
(gg)(hh) "KLEC Physical Fitness Testing Protocols", December 2009;.]
(hh) "KLEC Education Form - Applicant Education Verification", July 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council Office Funderburk Building, Eastern Kentucky University, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: November 8, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes approval requirements to show compliance with professional standards to meet certification requirements for law enforcement officers and telecommunications employed by law enforcement agencies and court security officers.

(b) The necessity of this administrative regulation: KRS 15.330 requires the Kentucky Law Enforcement Council to set minimum standards for training for certification and approve law enforcement officers who have met the requirements for certification. This regulation establishes the minimum standards and approval process.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 15.330 authorizes the Council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.590 authorizes the Council to promulgate administrative regulations as necessary regarding training, in-service training, and telecommunications practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants for certification guidance on the requirements to be approved by the Council.

(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 sets procedures for peace officers who were employed in law enforcement agencies outside the Commonwealth to be laterally employed by agencies within the Commonwealth by granting a portion of training hours for years of service as well as core training requirements and a minimum level of basic training hours.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to changes made to KRS 15.440 and to assist law enforcement agencies in replacing staff from retirements or being hired by other police agencies to meet coverage issues in the community.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330 authorizes the Kentucky Law Enforcement Council to approve law enforcement officers, telecommunications, and court security officers as having met requirements under KRS 15.310 to 15.510 and 15.530 to 15.590. KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.440 allows the Council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience. The amendment addresses the areas authorized by statute over which the Council has authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist law enforcement agencies in replacing staff from retirements or being hired by other law enforcement agencies to meet coverage issues in the community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement personnel who are required to be certified peace officers in the Commonwealth who received training and worked out of state previously.

(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 individual officer and agency can choose whether to take advantage of the opportunities to hire out of state officers to fill vacancies without having the time constraints for new full basic academy training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendment will result in reduced training costs in terms of salary and benefits paid while the officer would have been attending a full basic training course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will allow agencies to have their officers compliant with professional standards with reduced time and training costs.

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

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: There are no fees for training provided by the Department of Criminal Justice Training. No increase in funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as training funds are statutorily provided through KLEFPF. The law enforcement officers eligible for the training by statute and budget bill receive the same benefits of this training.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Law enforcement agencies and the Department of Criminal Justice Training 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 15.330, 5.380, 15.590, 15.440.

(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? This regulation does not provide revenue to any government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation does not provide revenue to any government entity.

(c) How much will it cost to administer this program for the first year? This amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years? This amendment is not anticipated to increase 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:

TRANSPORTATION CABINET Department of Highways Division of Traffic Operations (Amendment)

603 KAR 5:025. Fully controlled~~[Fully-controlled]~~ access highways.

RELATES TO: KRS~~[177.220, 177.230, 177.300, 189.190, 189.231, 189.340, 433.750, 433.753]~~

STATUTORY AUTHORITY: KRS 174.080~~[, 175.450(7), 177.230, 177.410(6), 189.231]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the Secretary of the Transportation Cabinet to promulgate administrative regulations to carry out the requirements of Chapters 175, 176, 177, and 178 relating to highways in the Commonwealth. This administrative regulation establishes requirements and limitations of public use for fully controlled access highways~~[promulgates prescriptions and proscriptions deemed necessary for the safe, orderly regulation of traffic for all Kentucky Toll Roads, Interstate Highways and other Fully Controlled Access Highways].~~

Section 1. Definitions. (1) "Farm equipment" is defined by 601 KAR 1:019~~["Farm implement" means machinery, equipment or vehicle used exclusively in a farm operation and which is not required by KRS Chapter 186 to be registered].~~

(2) "Fully controlled access highway" is defined by 601 KAR 1:019~~[means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets, and which shall have no highway grade crossing or intersection].~~

(3) "Moped" is defined by KRS 186.010(5)~~["Hitchhiking" means the solicitation of a ride in a motor vehicle].~~

(4) "Motor scooter" means a motor vehicle having a seat or saddle for the use of the driver and designed to travel on not more than three (3) wheels with a motor that is~~[which produces]~~ five (5) horsepower or less.

(5) "Pedestrian" is defined by KRS 189.010(8)~~["Toll road" means any turnpike project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet].~~

Section 2. Unidirectional Nature of Traffic Lanes and Ramps.

(1) On a fully controlled access highway with four (4) or more lanes~~[multilane (four (4) or more lanes) divided toll roads, interstate highways, and other fully controlled access highways]~~, no vehicle shall be operated or moved~~[otherwise caused to move]~~ in a direction that~~[which]~~ is against the normal flow of traffic on a~~[any]~~ traffic lane, deceleration lane, acceleration lane, ramp, shoulder, or other traveled way of the highway.

(2) On a two (2) lane, two (2) way fully controlled access highway~~[On two (2) lane, two (2) way undivided toll roads, interstate highways, and other fully controlled access highways]~~, no vehicle shall be operated or moved~~[otherwise caused to move]~~ in a direction that~~[which]~~ is against the normal flow of traffic on a~~[any]~~ traffic lane where passing is prohibited by signs or markings, or on a~~[any]~~ deceleration lane, acceleration lane, ramp, or shoulder~~[or other traveled way of such highway]~~.

Section 3. Prohibition of U-turns~~[and Left Turns]~~. The making of a U-turn on a fully controlled access highway~~[at any point on toll roads, interstate highways, and other fully controlled access highways]~~ is prohibited with the exception of~~[, Excepted from this provision are]~~ maintenance, emergency, and police vehicles.~~[The making of a left turn on these roads, except where permitted by official signs, is prohibited.]~~

Section 4. Prohibition of Standing, Stopping, or Parking on Shoulders. ~~No vehicle shall be parked, stopped, or allowed to stand on the shoulders of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto, except that in the case of emergency, vehicles shall be permitted to stop on the shoulders to the right of the traveled way with all wheels and projecting parts of the vehicle, including the load, completely clear of the traveled way. Parking of any vehicle which is disabled on the shoulders of a toll road, interstate highway, or other fully controlled access highway, including ramps thereto, for more than six (6) hours continuously is prohibited and vehicles violating this provision may be towed away at the cost of the owner.~~

Section 5. Waste and Rubbish. Littering of the right-of-way of any toll road, interstate highway, or other fully controlled access highway with bottles, cans, paper, garbage, rubbish or other material of any kind or description is prohibited.

Section 6. Damaging of Shrubs or Plants. No unauthorized person shall cut, mutilate, or remove any trees, shrubs, or plants located within the right-of-way of any toll road, interstate highway, or other fully controlled access highway.]

Section 4. Limitations. The following shall be prohibited within the right-of-way of a fully controlled access highway~~[Section 7. Limitations on Use. Use of toll roads, interstate highways, and other fully controlled access highways by the following is prohibited at all times]:~~

- (1) Bicycles or motor scooters;
- (2) Vehicles drawn by animals;
- (3) Animals led, ridden, or driven on hoof;
- (4) Vehicles with improperly secured loads, or loaded with

animals not properly confined;

(5) Vehicles with metal treads ~~or [and vehicles with] caterpillar treads;~~

(6) ~~Farm equipment that is [Farm implements which are] not being transported on a straight truck or truck trailer combination or a semitrailer;~~

(7) Construction equipment other than motor trucks, except by special permit; ~~[and]~~

(8) ~~Mopeds [Moped as defined in KRS 186.010(5)]; and~~

(9) ~~Pedestrians. [Section 8. Prohibition of Hitchhiking. No person shall solicit a ride in a vehicle while on any portion of the right-of-way of a toll road, interstate highway, or other fully controlled access highway.]~~

~~Section 9. Passing and Following Vehicles; Traffic Lanes (Applicable only to two (2) lane, two (2) way undivided toll roads, interstate highways, and other fully controlled access highways).~~

~~(1) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left of them and shall not again drive to the right until reasonably clear of those vehicles. No vehicle shall be driven to the left side of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken.~~

~~(2) Drivers shall obey the instructions of all signs and markings placed to assign traffic lanes, to specify directions or to designate slow moving traffic lanes in all areas where climbing lanes have been added.~~

~~(3) The operator of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of the vehicle and the traffic upon and the condition of the highway. The operator of any truck, bus, or heavy equipment unit shall not follow within 250 feet of another vehicle; this shall not prevent overtaking and passing, nor shall it apply to any lane designated for use of slow moving traffic.~~

~~Section 10. Prohibition of Vending on Shoulders and Right-of-way. No vehicle shall be parked, stopped, or allowed to stand on the shoulders or right-of-way of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto for the purpose of displaying, selling or offering for sale any merchandise, wares, produce, services or other items. Nor shall any person be allowed to engage in the above activities on the above mentioned shoulders or right-of-ways.]~~

GREG THOMAS, Secretary
PATY DUNAWAY, Department of Highways
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: October 31, 2017

FILED WITH LRC: November 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017 at 10:00 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 December 31, 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 the safety requirements and limitations on public use for fully controlled access highways.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to the public regarding the use of fully controlled access highways.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 174.080 authorizes the Secretary of the Transportation Cabinet to promulgate administrative regulations to carry out the requirements of KRS Chapters 175, 176, 177, and 178 relating to highways.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the safety requirements and limitations for fully controlled access highways, which are higher speed roads.

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

(a) How the amendment will change this existing administrative regulation: This is an update to an administrative regulation that has not been amended since 1991. This amendment removes unnecessary language relating to toll roads. In Section 7 it adds "pedestrians" to this administrative regulation from 603 KAR 5:020 that was repealed by the cabinet.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to update the current requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The cabinet is required to regulate the safe and orderly use of state highways pursuant to KRS Chapters 175, 176, 177, and 178.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the reg and inform motorists of the current requirements on fully controlled access highways.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects motorists operating a vehicle on the state's four (4) lane, or two (2) lane fully controlled access highways.

(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 will make the travelling public aware of limitations on fully controlled access highways.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3): Individuals and businesses travelling the state's highway system will be aware of limitations in usage.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: Fees are not necessary.

(8) State whether or not this administrative regulation

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all motorists on fully controlled access highways will be required to follow the same requirements and limitations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No divisions of state or local governments should be impacted. This administrative regulation effects all motorists travelling on Kentucky's interstates or fully controlled access highways.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 174.080.

(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 amendment will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will 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:

PUBLIC PROTECTION CABINET Department of Insurance Commissioner's Office (Amendment)

806 KAR 18:030. Group health insurance coordination of benefits.

RELATES TO: KRS 304.17-042, 304.17A-250(9), 304.18-032, 304.18-085, 304.32-145, 304.38-185[, 304.43-085]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-085, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner of the Department of Insurance~~executive director~~ may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.32-250 provides that the commissioner~~Executive Director of Insurance~~ may promulgate reasonable administrative regulations~~that he deems~~ necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides~~that~~ the commissioner~~Executive Director of Insurance~~ may promulgate reasonable administrative regulations~~which he deems~~ necessary for the proper administration of KRS 304.38. This administrative regulation establishes guidelines for coordination of benefits by group health insurance contracts.

Section 1. Definitions. (1) "Allowable expense" means a health care service or expense, including deductibles, coinsurance, and~~or~~ copayments, that is covered in full or in part by any of the plans covering the person. [(2) "Benefit reserve" means the

savings recorded by a plan for claims paid for a covered person as a secondary plan rather than as a primary plan.]

(2) [(3)] "Claim" means a request that benefits of a plan be provided or paid, and the benefits claimed may be in the form of:

(a) Services including supplies;

(b) Payment for all or a portion of the expenses incurred;

(c) A combination of paragraphs (a) and (b) of this subsection;

or

(d) An indemnification. [(4) "Claim determination period" means a period of at least twelve (12) consecutive months, over which allowable expenses shall be compared with total benefits payable in the absence of coordination of benefits, to determine whether overinsurance exists and how much each plan will pay or provide.]

(3) [(5)] "Complying plan" means a plan with benefit determination requirements that comply with the requirements of this administrative regulation.

(4) [(6)] "Coordination of benefits" means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(5) [(7)] "Custodial parent" means the parent awarded custody of a child by a court decree[, or with whom the child resides more than one-half (1/2) of the calendar year.

(6) [(8)] "Insurance contract" means a contract issued by an insurer as defined herein.

(7) [(9)] "Insurer" is defined in KRS 304.17A-005(27).

(8) [(40)] "Noncomplying plan" means a plan with no benefit determination requirements or whose benefit determination requirements do not comply with the requirements of this administrative regulation.

(9) [(14)] "Plan" means a form of coverage with which coordination of benefits is allowed and health benefit plans as defined in KRS 304.17A-005(22):

(a) "Plan" shall not include the medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" and traditional automobile "fault" type contracts;

(b) "Plan" may include Medicare benefits pursuant to 42 U.S.C. 1395, or other governmental benefits; and

(c) "Plan" shall not include school accident-type coverages which cover elementary, high school, and college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a "to-and-from school" basis.

(10) [(42)] "Primary plan" means a plan whose benefits for a person's health care coverage shall be determined without taking the existence of any other plan into consideration if:

(a) The plan either has no order of benefit determination requirements, or its requirements differ from those permitted by this administrative regulation; or

(b) All plans that cover the person use the order of benefit determination requirements required by this administrative regulation, and under those requirements the plan determines its benefits first.

(11) [(43)] "Secondary plan" means a plan that is not a primary plan.

Section 2. Requirements for Coordination of Benefits. (1) If a person is covered by two (2) or more plans, the requirements for determining the order of benefit payments are as follows:

(a) The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist;

(b) A plan that does not contain a coordination of benefits provision~~that is~~ consistent with this administrative regulation is always primary except that coverage obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may state~~provide that~~ the supplementary coverage shall be~~considered~~ secondary to the basic package of benefits provided by the contract holder; and

(c) A plan may take the benefits of another plan into account only when it is secondary to that other plan.

(2) Order of Benefit Determination. The~~first of the~~ following requirements shall be applied in the following priority, alphabetically to determine the order of plan payment~~that describes which plan pays its benefits before another plan is the requirement to use~~:

(a) Nondependent or dependent. The plan that covers a[the] person other than as a dependent is primary. ~~The[and the] plan that covers a~~[the] person as a dependent is secondary, unless the person is a Medicare beneficiary, in which case the order of benefits is determined in accordance with 42 U.S.C. 1395.

(b) Dependent child covered under more than one plan. Unless a court decree determines otherwise, plans covering a dependent child,[A child,] including a newborn subject to KRS 304.17-042 and 304.18-032, shall determine the order of benefits as follows:[covered under more than one (1) plan.]

1. The primary plan is the plan of the parent whose birthday is earlier in the year if:

- a. The parents are married;
- b. The parents are not separated (whether or not they ever have been married); or
- c. A court decree awards joint custody without specifying that one (1) parent has the responsibility to provide health care coverage.

2. If both parents have the same birthday, the plan that has covered either of the parents longer is primary.

3. If a court decree states that one (1) parent is responsible for the child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with[financial] responsibility has no coverage for the child's health care services or expenses, but the responsible[that] parent's spouse does, the spouse's plan is primary.

4. If the parents are divorced, separated, or not married[not married or are separated or divorced], and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and the parents' spouses (if any) is:

- a. The plan of the custodial parent;
- b. The plan of the spouse of the custodial parent;
- c. The plan of the noncustodial parent; and then
- d. The plan of the spouse of the noncustodial parent.

(c) Active or inactive employee. The plan that covers a person as an active employee,[who is] neither laid off nor retired, or as an active[that] employee's dependent, is primary. The plan covering the same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(d) Continuation coverage. If a person has[whose] coverage[is] provided under a right of continuation pursuant to federal or state law and is also covered under another plan,[the plan covering the person as an employee, member, subscriber or retiree, or as that person's dependent, is primary and] the continuation coverage is secondary.

(e) Longer or shorter length of coverage. If the preceding requirements do not determine the order of benefits, the plan that covered the person for the longer period of time is primary:

1. To determine the length of time a person has been covered under a plan, two (2) plans shall be treated as one (1) if the covered person was eligible under the second within twenty-four (24) hours after the first ended;

2. Changes during a coverage period that do not constitute the start of a new plan include:

- a. A change in scope of a plan's benefits;
- b. A change in the entity that pays, provides or administers the plan's benefits; or
- c. A change from one (1) type of plan to another.

3. The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding requirements determines the primary plan, the allowable expenses shall be shared equally between the plans.

Section 3. Procedure to be Followed by Secondary Plan to Calculate Benefits and Pay Claim. (1) A secondary plan shall reduce its benefits so that the total benefits paid or provided by all plans[during a claim determination period] are not more than 100

percent of total allowable expenses. ~~[(a) The secondary plan shall calculate its savings by subtracting the amount that it paid as a secondary plan from the amount it would have paid had it been primary and any savings shall be:~~

1. Recorded as a benefit reserve for the covered person; and
2. Used by the secondary plan to pay any allowable expenses, not otherwise paid, that are incurred by the covered person during the claim determination period.

~~(b) By the end of the claim determination period, the secondary plan shall:~~

1. Determine whether a benefit reserve has been recorded for the covered person;
2. Determine whether there are any unpaid allowable expenses for that claims determination period; and
3. Pay any unpaid allowable expenses for that claim determination period.

~~(c) The secondary plan shall use the covered person's recorded benefit reserve, if any, to pay up to 100 percent of total allowable expenses incurred during the claim determination period, at the end of which:~~

1. The benefit reserve shall return to zero; and
2. A new benefit reserve shall be created for each new claim determination period.

~~(2) The benefits of the secondary plan shall be reduced when the sum of the benefits payable under the secondary plan, in the absence of this coordination of benefits provision, and the benefits that would be payable under the other plans, in the absence of a coordination of benefits provision, whether or not a claim is made, exceeds the allowable expenses in a claim determination period, with a reduction of benefits as follows:~~

~~(a) The benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than the allowable expenses; and~~

~~(b) Each benefit is reduced in proportion and charged against any applicable benefit limit of the plan.]~~

~~(2)[(3)] If a person is covered by more than one secondary plan, the order of benefit determination requirements of this administrative regulation decide the order in which secondary plans benefits are determined in relation to each other.[Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under the requirements of this administrative regulation, has its benefits determined before those of that secondary plan.]~~

(3) The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in absence of other health care coverage.

Section 4. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one (1) health benefit plan, you should file all your claims with each plan."

Section 5. Miscellaneous Provisions. (1) Provision of Services. A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

(2) Non-Complying Plan Coordination.

(a) A plan with order of benefit determination requirements that comply with this administrative regulation may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination requirements that do not comply with those contained in this administrative regulation on the following basis:

1.[(a)] If the complying plan is the primary plan, it shall pay or provide its benefits first;

2.[(b)] If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In that situation, the payment shall be the limit of the complying plan's liability; and

3.[(c)] If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits

within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two (2) years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

(b)[(3)] If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than he would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to or on behalf of the covered person an amount equal to the difference.

(c)[(4)] The complying plan shall not advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service, and:

1. [(a)] In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan; and

2. [(b)] The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(3)[(5)] Coordination of benefits differs from subrogation. Provisions for one (1) may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(4)[(6)] If the plans cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been primary. [Section 6- Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of that provision to other persons or circumstances shall not be affected thereby.]

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 13, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017 at 9:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by December 14, 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 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 if received on or before 11:59 pm on December 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: First, this administrative regulation clarifies the coordination of benefit requirements and process when multiple group policies provide

coverage for an individual. The amendments conform to the National Association of Insurance Commissioner ("NAIC") model law provision used throughout the industry. While industry officials likely understand the requirements, the revisions will allow individual policyholders to clearly read and understand these regulatory provisions. Secondly, the amendment deletes a requirement for secondary plans to maintain a "benefit reserve account." The requirement is not statutorily required. In addition, the NAIC model law deleted the benefit reserve provision in 2004 due to the extremely high administrative costs on insurers and self-insureds from the substantial manual review of claims required to accurately maintain such accounts.

(b) The necessity of this administrative regulation: The regulation is necessary to clarify the coordination of benefit requirements and order of payment provisions for individual policyholders, to conform to the statutory requirements, and to reduce administrative burdens on group health policy plan sponsors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation clarifies coordination of benefit requirements in a clear manner as intended by KRS 304.18-085, and deletes the unauthorized requirement to maintain a benefit reserve account.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation satisfies the statutory mandate of KRS 304.18-085 to prescribe clear administrative regulations regarding the coordination of benefits between multiple, applicable group health insurance policies.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the language so that individuals have a better opportunity to understand coordination of benefits among multiple group health insurance policies. Further, it deletes the benefit reserve account requirement from secondary plans.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation previously used confusing language that hindered an individual from determining if he or she received the correct benefits from multiple group health insurance policies. Also, the amendment deletes the requirement not authorized on secondary plans to maintain a benefit reserve account.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes require the commissioner to promulgate an administrative regulation prescribing guidelines for the coordination of benefits. While the previous administrative regulation prescribed such guidelines, provisions were difficult to understand and follow, limiting their practical application. Additionally, the administrative regulation included a provision not authorized by statute, and imposed additional regulatory burdens on group health plans, both fully insured and self-insured.

(d) How the amendment will assist in the effective administration of the statutes: The changes will assist those individuals with multiple group health insurance policies to confirm the correct application of benefits for covered services. The amendment will greatly reduce the administrative burdens, costs, and resources expended on manual claims review for the purpose of maintaining the benefit reserve account.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals across the Commonwealth with multiple group health insurance policies will be impacted as well as the health insurance companies and self-insureds providing such coverage.

(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 amendments to the administrative regulation will not require any changes by impacted entities. Health

insurers and self-insureds may continue to utilize a benefit reserve account; however, they will no longer be required by regulation to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation will not impose a cost on impacted entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals and impacted insurance companies as well as those entities administering benefits will be able to clearly determine the proper order and process for paying benefits where multiple group health insurance companies provide coverage. Regulated entities choosing not to offer a benefit reserve account will achieve significant administrative savings, and resources currently utilized for manual review can be used elsewhere.

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

(a) Initially: The administrative regulation will not impose a cost.

(b) On a continuing basis: The administrative regulation will not impose a cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements are applicable to all impacted 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 Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.18-085 requires the commissioner to promulgate administrative regulations establishing the process for coordination of benefits between group health insurance policies.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government agencies in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative will not generate any revenue for state or local government agencies in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any costs for state or local government agencies in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any costs for state or local government agencies 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:

PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Depository Institutions (Amendment)

808 KAR 3:050 Conduct.

RELATES TO: KRS 286.6-100,[290.100,] 286.6-225,[290.225,] 286.6-585,[290.585,] 286.6-715,[290.715]

STATUTORY AUTHORITY: KRS 286.1-020, KRS 286.6-070 [290.070], KRS 286.6-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.6-070[290.070] authorizes the Department of Financial Institutions to make rules and administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation is to ensure the proper conduct of credit unions.

Section 1. Definitions. A "corporate credit union"[unit] means a credit union that:

(1) Is operated primarily for the purpose of serving other credit unions;

(2) Is designated by the National Credit Union Administration as a corporate credit union; and

(3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 286.6-225(3)[290.225], it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

~~[Section 3. Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Financial Institutions.]~~

Section 3[4]. Credit Union Annual Assessment Fee. Each state-chartered credit union shall pay an annual assessment fee to the department based on the assets of the credit union. (1) Pursuant to KRS 286.6-100, the annual assessment fee shall be based on the assets reported to the department on the 31st day of December of the previous calendar year

(2) The annual assessment fee shall be paid by April 1.

(3) The annual assessment fee schedule shall be as follows:

<u>If the total amount of assets equals:</u>	<u>The annual assessment fee shall be:</u>
<u>\$0 to \$2,000,000</u>	<u>\$1032.50 plus \$0.45 for each \$1,000 of assets over \$1,000,000</u>
<u>\$2,000,001 to \$5,000,000</u>	<u>\$1,482.50 plus \$0.30 for each \$1,000 of assets over \$2,000,000</u>
<u>\$5,000,001 to \$20,000,000</u>	<u>\$2382.50 plus \$0.15 for each \$1,000 of assets over \$5,000,000</u>
<u>\$20,000,001 to \$50,000,000</u>	<u>\$4,632.50 plus \$0.13 for each \$1,000 of assets over \$20,000,000</u>
<u>\$50,000,001 to \$100,000,000</u>	<u>\$8,532.50 plus \$0.10 for each \$1,000 of assets over \$50,000,000</u>
<u>Over \$100,000,000</u>	<u>\$11,532.50 plus \$0.05 for each \$1,000 of assets over \$100,000,000</u>

~~[Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.~~

~~(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.~~

~~(3) The schedule of examination fees shall be as follows:~~

~~(a) Newly organized credit union. No fee will be charged a~~

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

newly organized credit union for the first examination made within a year of the date of its organization being approved.

- (b) Credit union with assets of less than \$25,000; a fee of \$50.
- (c) Credit union with assets of \$25,000 to \$50,000; a fee of \$50 plus \$2 per \$1,000 of assets over \$25,000.
- (d) Credit union with assets of \$50,000 to \$100,000; a fee of \$100 plus \$1.90 per \$1,000 of assets over \$50,000.
- (e) Credit union with assets of \$100,000 to \$250,000; a fee of \$195 plus \$1.75 per \$1,000 of assets over \$100,000.
- (f) Credit union with assets of \$250,000 to \$500,000; a fee of \$457.50 plus \$1.20 per \$1,000 of assets over \$250,000.
- (g) Credit union with assets of \$500,000 to \$1,000,000; a fee of \$757.50 plus \$.55 per \$1,000 of assets over \$500,000.
- (h) Credit union with assets of \$1,000,000 to \$2,000,000; a fee of \$1,032.50 plus \$.45 per \$1,000 of assets over \$1,000,000.
- (i) Credit union with assets of \$2,000,000 to \$5,000,000; a fee of \$1,482.50 plus \$.30 per \$1,000 of assets over \$2,000,000.
- (j) Credit union with assets of \$5,000,000 to \$20,000,000; a fee of \$2,382.50 plus \$.15 per \$1,000 of assets over \$5,000,000.
- (k) Credit union with assets of \$20,000,000 to \$50,000,000; a fee of \$4,632.50 plus \$.13 per \$1,000 of assets over \$20,000,000.
- (l) Credit union with assets of \$50,000,000 to \$100,000,000; a fee of \$8,532.50 plus \$.10 per \$1,000 of assets over \$50,000,000.
- (m) Credit union with assets over \$100,000,000; a fee of \$11,532.50 plus \$.05 per \$1,000 of assets over \$100,000,000.]

Section 4[5]. Fidelity Bond. (1) The minimum blanket fidelity bond required by KRS 286.6-225(2)[290.225(2)] shall be as follows:[the amount set forth in the following chart based on the assets of the credit union:]

Assets	Minimum Bond
\$0 to \$10,000	Amount equal to the credit union's assets
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year [in order] to ascertain its adequacy [in relation to risk exposure].

Section 5[6]. Stocks and Bonds. A credit union may invest a maximum of five (5) percent of members shares in:

- (1) Stock of a corporation rated A+ in the current issue of Standard and Poore's Corporation Security Owners Stock Guide at the date of acquisition of the stock; and
- (2) A corporate bond rated AAA or higher in the current issue of Standard and Poore's Corporation Bond Guide, or rated AAA in the current issue of Moody's Bond Record at the date of acquisition of the bond.

Section 6[7]. Risk Asset. For the purpose of establishing the regular reserve, an asset is a risk asset except for the following:

- (1) Cash on hand;
- (2) A share[deposit] or deposit[share] in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;
- (3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;
- (4) A loan to another credit union that has a remaining maturity of five (5) years or less;
- (5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et

seq.) or similar state insurance programs;

(6) A loan that has a remaining maturity of five (5) years or less and that is fully insured or guaranteed by the federal or a state government or any agency of either;

(7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 U.S.C. 704.

(8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act that are either carried at the lower cost or market, or are marked to market value monthly;

(9) A prepaid expense;

(10) Accrued interest on a nonrisk investment;

(11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) A loan which is purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;

(13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of Section 203[section 208](a)(1) of the Federal Credit Union Act;

(14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;

(15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;

(16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the following criteria:

(a) The interest rate is reset at least annually;

(b) The interest rate of the instrument is less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer; and

(c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index;

(17) A fixed asset which includes an office, branch office, suboffice, service center, parking lot, or real estate where the credit union transacts or will transact business; office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and

(18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares.

Section 7[8]. Charitable Contribution. The board of directors may authorize a contribution to a civic, charitable or service organization.

Section 8[9]. Conversion. A state-chartered credit union may convert to another charter by complying with the following procedures:

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, which shall include a statement including the reasons for the proposed conversion. The notice shall[may] be mailed to the last known address or hand delivered to the members. The notice shall set forth the date and place for this meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow voting by absentee ballot[ballots].

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(4) The commissioner shall issue an order that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 14, 2017

FILED WITH LRC: November 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017, at 1:00 P.M., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through the end of the calendar day, 11:59 p.m., December 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regis@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation updates rules and regulations for the proper conduct of the business of credit unions pursuant to recent statutory changes. The regulation addresses refunds of interest, advertising, stocks and bonds, risk assets, charitable contributions, the conversion process for state chartered credit unions, and fidelity bonds. The regulation also establishes a new schedule of annual assessment fees for credit unions.

(b) The necessity of this administrative regulation: This amendment is necessary to bring the existing regulation into conformity with KRS 286.6-100 which was amended during the 2017 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.6-070 requires the Department of Financial Institutions to prescribe rules and regulations for the proper conduct and regulation of credit unions. This administrative regulation was originally promulgated to assure the proper conduct of credit unions. The current amendment is necessary to bring the regulation into conformity with the current version of KRS 286.6-100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amended regulation assists in the effective administration of the statutes by setting forth updated rules and regulations for the proper conduct of credit unions.

(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 abolishes credit union examination based fees and establishes a more streamlined annual assessment fee structure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to amendments to KRS 286.6-100 passed during the 2017 Regular Session. The

amendment establishes a more streamlined and simplified fee structure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment revises fees in accordance with the authority given in 286.1-020(1), KRS 286.6-070 and KRS 286.6-100.

(d) How the amendment will assist in the effective administration of the statute: This amendment will assist in the effective administration of the statute by streamlining and simplifying the schedule of fees for credit unions and bringing the regulation into conformity with the current version of the Kentucky Revised Statutes.

(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 all state chartered credit unions. There are currently 24 state chartered credit unions 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 new regulation will require these entities to pay an annual fee for services rendered by the Department pursuant to KRS 286.6-100.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Rather than paying fees upon examination, entities will pay the annual fees established by this regulation based on the amount of assets on hand as of December 31 of the preceding year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will simplify the fee structure for state chartered credit unions and ensure that the Department is vested with sufficient resources and expertise to provide them with regulatory oversight.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: Funds generated from the fees prescribed by the regulation are anticipated to cover the cost of services provided.

(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 regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation changes the fee structure for credit unions from a fee for services model to an annual assessment model pursuant to changes adopted by the legislature reflected in KRS 286.6-100. There is no overall fee increase or decrease, but it appears one credit union will pay an increased fee as a result of the amendment.

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply uniformly to similarly situated 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 Kentucky Department of Financial Institutions will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 286.1-020(1), KRS 286.6-070, and KRS 286.6-100.

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? There will be no significant change in revenue as a result of this amendment.

(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? There will be no significant change in revenue as a result of this amendment.

(c) How much will it cost to administer this program for the first year? There will be a negligible cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be a negligible cost to administer this program.

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

Revenues (+/-): See above.

Expenditures (+/-): See above.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:130. Certificate of Need criteria for physician exemption.

RELATES TO: KRS 216B.010, 216B.015, 216B.020, 216B.040, 216B.095, 216B.990, 311.271

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Entity" means any legally recognized business entity in which an individual or group may practice its profession including a professional limited liability company, professional service corporation, partnership, or sole proprietor.

(3) "Evaluation and Management codes" means those codes recognized by the American Medical Association as procedures involving evaluation of patients and management of patient care in the Current Procedural[Procedure] Terminology© references.

(4) "Office" or "clinic" means the physical location at which health care services are provided by a physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech-language pathologist[speech therapist], occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts.

(5) "Owner" means a person as defined by[in] KRS 216B.015(22)[(24)] who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(6) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(7) "Practitioner of the healing arts" means a person licensed by the appropriate state agency to practice a healing art as defined by[in] KRS 311.271(2)(a).

(8) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time. ~~[(9) "Qualified academic medical center" means:~~

~~(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;~~

~~(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or~~

~~(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person referenced in paragraph (a) or (b) of this subsection.]~~

Section 2. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from the Certificate of Need requirements.

Section 3. Physician Exemption from Certificate of Need. (1)(a) An office or clinic that would otherwise be required to obtain a Certificate of Need shall be exempt from Certificate of Need pursuant to KRS 216B.020(2) if:

1. ~~(a)~~ The practice claiming the exemption is 100 percent owned in an organizational form recognized by the Commonwealth as one (1) in which the listed professions can be practiced by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech-language pathologist[speech therapist], occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of physicians, dentists, ~~er~~] advanced practice registered nurses, licensed clinical social workers, speech-language pathologists[speech therapists], occupational therapists, physical therapists, psychologists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

2. ~~(b)~~ The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. ~~(c)~~ Services or equipment covered by the State Health Plan that [which] are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. ~~(d)~~ A physician or physicians licensed to practice and practicing in Kentucky within the practice and claiming the exemption have overall responsibility for directing and coordinating the care and management of services[are responsible for all decisions regarding the care and treatment] provided to patients;

5. ~~(e)~~ Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. ~~(f)~~ Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption; and

7. ~~(g)~~ Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption.

~~(b); and (h) Nothing in~~ This section shall not limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued by the Office of Health Policy specifically with respect to that office or clinic;

2. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

3. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(2) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

(a) Compliance with subsection (1)(a) 1., 4., 5., and 6. ~~[(d), (e), and (f)]~~ of this section;

(b) The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(c) The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(3) A hospital-acquired private practice or an outpatient clinic under the same ownership and administrative and financial control as a Kentucky-licensed hospital shall demonstrate that:

(a) The practice or clinic does not:

1. Provide pain management services at an off-campus clinic in which the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances;

2. Provide any services or equipment covered by the State Health Plan; or

3. Provide outpatient surgical services; and

(b) The physician or physicians and other practitioners of the healing arts providing care and treatment to patients of the office or clinic are:

1. Licensed to practice in Kentucky; and

2. Employed by the:

a. Hospital; or

b. Entity with ownership and control of both the hospital and office or clinic[An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

(a) The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

(b)1. The office was established and in operation prior to January 31, 2006;

2. The office does not provide any services or equipment covered by the State Health Plan; or

3. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located].

MOLLY N. LEWIS, Acting Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, phone 502-564-2888, email stephanie.brammer@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need (CON) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the physician exemption criteria necessary for the orderly administration of the CON Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the physician exemption criteria.

(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: Under the physician exemption criteria established by 900 KAR 6:130, Section 3(3), outpatient clinics owned and operated by qualified academic medical centers are exempt from the CON Program and licensure as a health facility under KRS Chapter 216B. This amendment seeks to expand the physician exemption criteria by adding outpatient clinics owned and operated by Kentucky-licensed hospitals. This amendment also adds clarifying language in Section 3(1)(a)4 that would allow Kentucky-licensed practitioner/owners to qualify for the physician exemption criteria if the owner employs a practitioner(s) from another discipline and maintains overall responsibility for directing and coordinating the care and management of services provided to patients in the clinic.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for approval of the proposed physician exemption criteria.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the physician exemption criteria necessary for the orderly administration of the CON Program.

(d) How the amendment will assist in the effective administration of the statutes: All physicians and practitioners of the healing arts operate under the scope of their professional license whether they own their practice or are otherwise acquired by a hospital. From a patient care and service standpoint, nothing changes when a physician or practitioner becomes employed by a hospital as their offices continue to operate no differently than a private practice. Therefore, this amendment will assist in the effective administration of the statutes by expanding the physician exemption criteria to include hospital-owned and operated clinics that provide services equivalent to a private practice. This approach is consistent with the current exemption for outpatient clinics owned and operated by qualified academic medical centers. This amendment further streamlines the licensure process by allowing a health facility or service owned by a practitioner to qualify for the physician exemption if the practitioner-owner employs a practitioner(s) from another discipline.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects hospital-acquired practices and hospital-owned and operated outpatient clinics that provide services equivalent to a private practice. This amendment also affects health facilities or services owned by a practitioner who employs a practitioner(s) from another discipline.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To qualify for the physician exemption, hospital-owned and operated outpatient clinics will have to meet the following criteria: not provide pain management services at an

off-campus clinic in which the majority of patients are provided treatment for pain that includes the use of controlled substances; not provide services or equipment covered by the State Health Plan; not provide outpatient surgical services; and ensure that the physicians and other practitioners in the clinic are licensed to practice in Kentucky and employed by the hospital. In addition, a health facility or service owned by a practitioner who employs a practitioner(s) from another discipline will no longer be subject to licensure by the Office of Inspector General.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospital-owned and operated outpatient clinics that provide services equivalent to a private practice would not be subject to additional regulation. In addition, a health facility or service owned by a practitioner who employs a practitioner(s) from another discipline will no longer be subject to licensure by the Office of Inspector General.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred 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: No new funding will be needed to implement the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects hospital-owned and operated outpatient clinics that provide services equivalent to a private practice. This amendment also affects health facilities or services owned by a practitioner who employs a practitioner(s) from another discipline. Further, this administrative regulation will impact the Cabinet for Health and Family Services, Office of Health Policy and Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)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 amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 198B.260, Chapter 209, 211.842-211.852, Chapter 214[244.175], 216.2970, 216B.010, 216B.015, 216B.040, 216B.042, 216B.0425(2), 216B.045, 216B.050, 216B.055, 216B.075, 216B.085, 216B.105-216B.125, 216B.140-216B.175, 216B.185, 216B.190, 216B.230-216B.239, 216B.250, 216B.400-216B.402, 216B.990, 219.011-219.081, Chapter 310 [341.241-341.247,] 311.560[(4)], 311.992, Chapter 311B, 314.011(8), 314.042(8), 320.210(2), 333.030, 446.400, Chapter 620, 29 C.F.R. 1910.1030(d)(2)(vii), 40 C.F.R. Part 403, 42 C.F.R. Part 405, 412.22(c), Part 493, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 - 1320d-8, 1395x(r)(2) - (5), 1395u(b)(18)(C)[412.23(e)]

STATUTORY AUTHORITY: KRS [216.2970(1),] 216B.042(1), 216B.175(3), 42 U.S.C. 263a]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires[that] the[Kentucky] Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient [regulate] health facilities and health services. This administrative regulation—establishes the minimum licensure requirements for the operation of hospitals and the basic services [to be] provided by hospitals.

Section 1. Definitions. (1) "Accredited record technician" means an individual who:

(a)[a person who] Has graduated from a program for medical record technicians that is accredited by the Council on Medical Education of the American Medical Association and the American Health Information Management[Medical Record] Association;[.] and

(b)[who] Is certified as an accredited record technician by the American Health Information Management[Medical Record] Association.

(2)[“Certified radiation operator” means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation-producing machines.

(3) "Governing authority" means the individual, agency, partnership, or corporation[.] in which the ultimate responsibility and authority for the conduct of the health facility[institution] is vested.

(3)[(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5) "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is greater than twenty-five (25) days.

(4)[(6) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(7) "Organ procurement agency" means a federally designated organization that[which] coordinates and performs activities to[which] encourage the donation of organs or tissues for transplantation.

(5)[(8) "Protective device" means a device designed to protect a person from falling, and may include:

~~(a)[to include] Side rails;~~

~~(b) A[.] safety vest; or~~

~~(c) A safety belt.~~

~~(6)[(9)] "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.~~

~~(7) "Registered health information administrator" means an individual who has obtained professional certification from the American Health Information Management Association.~~

~~(8)[(40)] "Registered[, certified] or registry-eligible dietitian" means an individual [a person] who is licensed as a dietitian[certified] in accordance with KRS Chapter 310.~~

~~(9)[(11)] "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association.~~

~~(12)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body. [(13) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.~~

~~(14) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.]~~

Section 2. Requirements to Provide Services. A facility shall not be licensed as[.] or hold itself out to be[, or be called,] a hospital unless it provides:

(1) The full range of services required by Section 4 of this administrative regulation; and

(2) Treatment for a variety of illnesses.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for:

1. The management and operation of the hospital; and

2.[for] Compliance with federal, state, and local law pertaining to its operation.

(b) The governing authority shall:

1. Appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority; and

2. Designate a mechanism for the annual[periodic] performance review of the administrator.

(2) Administrator.

(a) The administrator shall:

1. Act as the chief executive officer;

2. Be responsible for the management of the hospital; and

3. Act as the[Provide] liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through:

1.[Periodic] Reports; and

2. Attendance at meetings of the governing authority.

(c) The administrator shall:

1. Develop an organizational structure including lines of authority, responsibility, and communication; and

2. Organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of each subordinate[subordinates] to whom the administrator[he] has assigned duties.

(e) The administrator shall:

1. Hold interdepartmental and departmental meetings as[, where] appropriate;

2. Attend or be represented at the meetings on a regular basis; and

3. Report to each department and[as well as] to the governing authority the pertinent activities of the hospital.

(3) Administrative records[and reports].

(a) The hospital shall establish administrative records that

reflect and guide the administrative operations of the hospital, including:

1. Minutes of the governing authority;

2. Financial records;

3. Personnel records; and

4. Employee health records.

(b) A hospital shall have discretion as to the form or content of any administrative record it establishes.

(c)[Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Administrative reports shall include:

1. Minutes of the governing authority and staff meetings;

2. Financial records and reports;

3. Personnel records;

4. Inspection reports;

5. Incident investigation reports; and

6. Other pertinent reports made in the regular course of business.

(b)] The hospital shall maintain a:

1. Patient admission register;

2.[and] Discharge register;

3.[If applicable, a] Birth register, if applicable; and

4.[a] Surgical register, if applicable[shall also be maintained].

(d)[(e)] Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility that includes the[including] lines of authority, responsibility, and communication, and departmental organization;

(b) The admission procedure to assure[which assures] that a patient is admitted to the hospital in accordance with medical staff policy;

(c) Any constraint imposed on admissions by a limitation of:

1. Services;

2. Physical facilities;

3. Staff coverage; or

4. Other relevant factor;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian, or legal representative for diagnostic or[and] treatment procedures;

(g) Effective procedures for tracking[An effective procedure for recording accidents involving a patient, visitor, or staff member, including] incidents, including[of] transfusion reactions, drug reactions, and medication errors that may occur in the facility. A hospital shall have discretion as to its process, and the procedures shall encourage[, and similar events, and a] statistical analysis to inform process improvement activities[shall be reported in writing through the appropriate committee];

(h) Procedures for meeting the requirements of KRS Chapter 214 and 902 KAR 2:020, including the reporting of:

1. Notifiable infectious conditions;

2. Notifiable non-infectious conditions;

3. Multi-drug resistant organisms;

4. Other reportable disease surveillance; and

5. Electronic laboratory reporting.[Report of communicable diseases to the health department in whose jurisdiction the disease occurs, pursuant to the reporting requirements of KRS Chapter 214 and 902 KAR 2:020];

(i) Use of restraints and a mechanism for monitoring and controlling the[their] use of restraints;

(j) The internal transfer of a patient from one (1) level or type of care to another, if applicable;

(k) The discharge and termination of services;[and]

(l) An organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency; and

(m) Policies that assure the reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620, including evidence that all

allegations of abuse, neglect, or exploitation are thoroughly investigated internally to prevent further potential abuse while the investigation is in progress.

(5) Patient identification. The hospital shall have a system for identifying each patient from the time of admission to discharge. For example, an identification bracelet imprinted with the following:

- (a) Name of patient;
- (b) Hospital identification number;
- (c) Date of admission; and
- (d) Name of attending medical staff member.

(6) Discharge planning.
(a) The hospital shall have a discharge planning program to assure continuity of care for a patient who is being:

- 1. Transferred to another health care facility; or
- 2. Discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall:

1. Coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient; and

2. Provide pertinent information concerning postdischarge needs to the responsible person or agency, including the full range of qualified providers or appropriate support organizations in the community available to provide post-acute care services; and

3. Comply with the requirements established in KRS 216B.230 to 216B.239, which include providing each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver.

(7) Transfer procedures and agreements.

(a) The hospital shall have a written patient transfer procedure and agreement with at least one (1) of each type of other health care facility able to provide a level of inpatient care not provided by the hospital.

(b) A hospital that facility which does not have a transfer agreement in effect, but has documented a good faith effort to enter into such an agreement, shall be in compliance with paragraph (a) of this subsection requirement.

(c) A transfer procedure and agreement shall:

1. Specify the responsibilities each institution assumes in the transfer of a patient; and

2. Establish the hospital's responsibility for:

- a. Notifying the receiving entity promptly of the impending transfer of a patient; and
- b. Arranging for appropriate and safe transportation.

(d)(b) If a patient is transferred to another health care facility or to the care of a home health agency:

1. A transfer form containing the following information shall accompany the patient or be sent immediately to the other health care facility or home health agency:

- a. Attending medical staff member's instructions for continuing care;
- b. Current summary of the patient's medical record;
- c. Information as to special supplies or equipment needed for patient care; and
- d. Pertinent social information on the patient and family; and

2. A copy of the patient's signed discharge summary shall be forwarded to the health care facility or home health agency within thirty (30) days of the patient's discharge.

(e)(e) If a patient is transferred transfer is to another licensed level of care within the same facility:

1. The history and physical examination report shall:

a. Be transferred to the other licensed level of care within the same hospital pursuant to KRS 216B.175(3); and

b. shall be transferred and shall Serve to meet the history and physical examination requirement for the licensed level of care to which the patient has been transferred, in accordance with KRS 216B.175(3); and

2. The complete medical record or a current summary of the record shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under

bylaws approved by the governing authority.

(b) The medical staff shall be responsible:

1. To the governing authority for the quality of medical care provided to the patients; and

2. For the ethical and professional practice of its members.

(c) The organized medical staff shall be composed of doctors of medicine or doctors of osteopathy.

(d) At the discretion of the hospital, the governing body may elect to include the following practitioners as eligible for appointment to the medical staff to provide only those services authorized within the practitioner's respective scope of practice:

1. A licensed practitioner described in 42 U.S.C. 1395x(r)(2) – (5); or

2. A non-physician licensed practitioner described in 42 U.S.C. 1395u(b)(18)(C).

(e) The governing body of a hospital shall not be required to open eligibility for medical staff appointment to any licensed practitioner in addition to doctors of medicine or doctors of osteopathy.

(f)(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority that address the following, which shall:

1. State the necessary Qualifications for medical staff membership, including licensure to practice medicine or dentistry in Kentucky in accordance with authorized scope of practice, except for graduate doctors of medicine or doctors of osteopathy physicians in their first year of hospital training;

2.a. Define and describe the Responsibilities and duties of each category of medical staff membership the medical staff may choose to create, for example, active, associate, or courtesy;

b. Delineate the Clinical privileges that may be possessed by medical staff members and allied health professionals;

c. Procedures Establish a procedure for granting and withdrawing medical staff membership and clinical privileges; and

d. Procedures for reviewing credentials [review];

3. Provide A mechanism for appeal of decisions adversely affecting medical staff membership or clinical privileges;

4. Provide A method for the selection of officers of the medical staff;

5. Policy Establish requirements regarding the frequency of meetings of the medical staff;

6. Authority to appoint committees to address areas of operation or clinical focus, which may include the following Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. Committees may include:

a. Executive committee;

b. Credentials committee;

c. Medical audit committee;

d. Medical records committee;

e. Infection Infections control committee;

f. Tissue committee;

g. Pharmacy and therapeutics committee;

h. Utilization review committee; or

i. and Quality assurance committee; and

7. Establish A policy requiring a member of the medical staff to sign a verbal order for diagnostic testing or treatment:

a. As soon as possible after the order was given; or

b. If the patient was discharged prior to the order being authenticated, within thirty (30) days of the patient's discharge.

(g) All licensed practitioners appointed to the medical staff shall:

1. Be privileged in accordance with and function under the policies or bylaws required by paragraph (f) of this subsection; and

2. Comply with the hospital infection control and employee health policies.

(9) Personnel. (a) The hospital shall:

(a) Employ a sufficient number of qualified personnel to provide effective patient care and other related services;

(b) and shall Have written personnel policies and procedures

available to hospital personnel;

(c) ~~Have~~ (b) There shall be a written job description for each position subject to review and revision. Each job description shall be reviewed and revised as necessary;

(d) ~~Have~~ (e) There shall be an employee health program for the mutual protection of employees and patients, including provisions for preemployment medical [and periodic health] examination and follow-up medical examination no less than every three (3) years thereafter for staff who serve patients;

(e) Have a tuberculosis infection control program;

(f) ~~The hospital shall~~ Comply with the [following] tuberculosis testing requirements established for health care workers in 902 KAR 20:205; and

(g) Maintain the following information: 1. The skin test status of each staff member shall be documented in the employee's personnel record.

a. A skin test shall be initiated on each new staff member before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

b. Skin testing shall not be required at the time of initial employment if the employee:

(i) Documents a prior skin test of ten (10) or more millimeters of induration; or

(ii) Is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for a new employee over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless the employee can document that he or she has had a tuberculosis skin test within one (1) year prior to his or her current employment.

d. A staff member who has never had a skin test result of ten (10) or more millimeters induration shall be skin tested annually, on or before the anniversary of the last skin test.

2. A staff member who has a skin test result of ten (10) or more millimeters induration on initial employment or annual testing, shall receive a chest x-ray unless:

a. A chest x-ray within the previous two (2) months showed no evidence of tuberculosis; or

b. The individual can document the previous completion of a course of prophylactic treatment with isoniazid. The employee shall be advised of the symptoms of the disease and instructed to report to his or her employer and to seek medical attention promptly if symptoms persist.

3. The hospital administrator shall ensure that skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. Skin testing dates and results and chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known:

a. Names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and

b. Chest x-rays suspicious for tuberculosis.

5. A staff member whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months, unless medically contraindicated, as determined by a licensed physician. A medication shall be administered only upon the written order of a physician or other ordering personnel acting within their statutory scope of practice. If an individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and shall have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. A staff member who documents completion of preventive treatment with isoniazid shall be exempt from further screening

requirements.

(d) ~~The following information shall be included~~ in each employee's personnel record:

1. Name, address, Social Security number;
2. Health record [records];
3. Evidence of current registration, certification, or licensure;
4. Record [Records] of training and experience; and
5. Record [Records] of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas:

1. Plant maintenance;
2. [.] Laundry operations; [(if applicable);] and
3. Housekeeping.

(c) There shall be an infection control program [committee] charged with [the] responsibility for [of] investigating, controlling, and preventing infections in the hospital. A multidisciplinary infection control [The] committee shall have oversight of the program. The program shall:

1. Be directed by:

a. A certified infection control preventionist; or

b. An infection preventionist that has education or specialized training and experience necessary to be certified within two (2) years of employment;

2. Have assigned administrative and professional staff to perform:

a. Infection control surveillance;

b. Investigation of cases and outbreaks;

c. Infection control training;

d. Reporting of diseases; and

e. Infection control collaborations with employee health services;

3. Receive every report of an infection incident discovered by an employee; and

4. [2.] Develop written infection control policies [.] consistent with the Centers for Disease Control and Prevention guidelines.

(d) The infection control policies shall address the:

1. Prevention of disease transmission to and from patients, visitors, and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections that [which] can be transmitted by the airborne route; [and]

c. Work restrictions, including return to work policies for employees with infectious diseases;

d. Policies for vaccinating health care personnel or documenting immunity status for:

(i) Hepatitis B;

(ii) Influenza;

(iii) Measles;

(iv) Mumps;

(v) Rubella;

(vi) Pertussis; and

(vii) Varicella;

e. Policies for vaccinating health care personnel to prevent meningococcal disease, typhoid fever, or polio for personnel who have certain health conditions or are at risk for work-related exposure;

f. Handwashing and hand hygiene;

g. Antimicrobial stewardship; and

h. Reporting, investigating, and controlling outbreaks of healthcare-associated infections;

2. Use of environmental cultures; [.] Culture testing results shall be recorded and reported to the Infection Control Committee; and

3. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, and free from

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

accumulations of dirt, rubbish, and foul, stale, or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. A written housekeeping procedure shall be:

- a. Established for the cleaning of each area; and
- b. ~~Copies shall be~~ Made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. ~~The~~~~Such~~ equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be:

- a. Labeled;
- b. ~~Stored in closed metal containers;~~ and
- c. Kept separate from other cleaning materials.

5. The facility shall be kept free from insects, ~~and~~ rodents, ~~and~~ their nesting places, and entrances to their nesting places shall be eliminated.

6. Garbage and trash shall be:

- a. ~~Shall be~~ Stored in areas separate from those used for preparation and storage of food; ~~and~~
- b. ~~Shall be~~ Removed from the premises regularly.

7. ~~Trash; and c.~~ containers shall be cleaned on a regular basis.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be:

- a. Segregated from other wastes; and
- b. Placed in puncture resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall be:

- a. Incinerated on or off site; or
- b. ~~shall be~~ Rendered nonhazardous.

4. Nondisposable sharps, such as large-bore needles or scissors, shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department, in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. Disposable waste shall be:

- a. Placed in a suitable bag or closed container ~~so as~~ to prevent leakage or spillage; and
- b. ~~shall be~~ Handled, stored, and disposed of ~~in such a way as~~ to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of waste material.

3. ~~The following~~ wastes identified in this subparagraph shall receive special handling:

a. Microbiology laboratory waste including a viral or bacterial culture, contaminated swab, or a specimen container or test tube used for microbiologic purposes shall be incinerated, autoclaved, or otherwise rendered nonhazardous; ~~and~~

b. Pathological waste including a tissue specimen from a surgical or necropsy procedure shall be incinerated.

4. Blood, blood specimens, used blood tubes, or blood products ~~The following wastes~~ shall be:

- a. Disposed of by incineration;
- b. ~~or be~~ Autoclaved before disposal; or
- c. ~~be~~ Carefully poured down a drain connected to a sanitary sewer, subject to limitations in subparagraph 5, of this paragraph: ~~blood, blood specimens, used blood tubes, or blood products~~.

5. Wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 C.F.R. ~~[C.F.R.] 403; 401 KAR 5:557;~~ and relevant local ordinances.

6. An incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed ~~so as~~ to control the spread of infection.

2. Clean linen and clothing shall be stored in a clean, dry, dust-

free area designated exclusively for this purpose.

3. An uncovered mobile cart may be used to distribute a daily supply of linen in patient care areas.

4. ~~3.~~ Soiled linen and clothing shall be placed in a suitable bag or closed container ~~so as~~ to prevent leakage or spillage, and ~~there shall be minimal handling of soiled linen to prevent generating further aerosols~~ ~~handled in such a way as to minimize direct exposure of personnel to soiled linen~~.

5. Soiled linen shall be stored in an area separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records.

(b) A medical record shall be maintained; for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall:

a. Be directed by:

- (i) A registered health information ~~records~~ administrator; either on a full-time, part-time, or consultative basis; or
- (ii) ~~by~~ An accredited record technician on a full-time or part-time basis; and

b. ~~shall~~ Have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. Medical records shall be retained for at least:

- a. ~~Six (6)~~ Five (5) years from date of discharge; or
- b. ~~If, in the case of~~ a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest ~~longer~~.

3. A provision shall be made for written designation of the specific location for storage of medical records ~~if in the event~~ the hospital ceases to operate because of disaster; or for any other reason.

4. The hospital shall be responsible for safeguarding ~~It shall be the responsibility of the hospital to safeguard both~~ the record and its informational content against loss, defacement, and tampering.

5. Particular attention shall be given to protection from damage by fire or water.

(c) ~~(b)~~ A system of identification and filing to assure ~~insure~~ the prompt location of a patient's medical record shall be maintained in accordance with the requirements of this paragraph.

1. Index cards, if used, shall bear at least the patient's full name, birth date, and medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of a patient whose admission is a result of, or related to, outpatient services.

3. Clinical information pertaining to inpatient and outpatient services shall be centralized in the patient's medical record.

4. A hospital using automated data processing shall ~~may~~ keep patient indices electronically or reproduced on paper and kept in books.

(d) Ownership.

1. Medical records shall be ~~(c) Records of patients are~~ the property of the hospital.

2. The original medical record shall not be removed ~~and shall not be taken~~ from the facility except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (e) of this subsection.

(e) Confidentiality and Security: Use and Disclosure.

1. The hospital shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The hospital may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. A hospital may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(f) ~~A patient's records, or portion thereof, including x-ray film, may be routed for consultation.~~

1. ~~Only authorized personnel shall be permitted access to the patient's records.~~

2. ~~Patient information shall be released only on authorization of the patient, the patient's guardian, or the executor of his estate.~~ (d) Medical record contents shall be pertinent, ~~and~~ current, and ~~shall~~ include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of ~~the~~ person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(d)2.(b)2 of this section;

3. Chief complaint;

4. Medical history including present illness, travel history, occupational history, past history, family history, and physical examination results;

5. Report of special examinations or procedures, which may include ~~such as~~ consultations, clinical laboratory tests, x-ray interpretations, or EKG interpretations, ~~etc.~~;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or other ordering personnel acting within the limits of his or her ~~their~~ statutory scope of practice;

8. Medical, surgical, or ~~and~~ dental treatment notes and reports, signed and dated by a physician, dentist, or other ordering personnel acting within the limits of his or her ~~their~~ statutory scope of practice if ~~when~~ applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by the attending surgeon, ~~or oral surgeon, including the:~~

a. to include Anesthesia record signed by the anesthesiologist or anesthetist;

b. Preoperative physical examination and diagnosis;

c. Description of operative procedures and findings;

d. Postoperative diagnosis; ~~and~~

e. Tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan that ~~which~~ addresses the comprehensive care needs of the patient, including ~~to include~~ the coordination of the facility's service departments that have impact on patient care;

11. Nurses' observations and progress notes of a physician, dentist, or other ordering personnel acting within the practitioner's ~~their~~ statutory scope of practice;

12. Record of temperature, blood pressure, pulse, and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, if ~~as is~~ applicable;

14. Discharge summary, including:

a. Condition of patient on discharge; ~~and~~

b. Date of discharge; and

15. In case of death:

a. Autopsy findings, if performed; and

b. An indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(g) ~~(e)~~ Records shall be indexed according to disease, operation, and attending medical staff member using a ~~Any~~ recognized indexing system may be used.

1. The disease and operative indices shall:

a. Use recognized nomenclature;

b. Include each specific disease diagnosed and each operative procedure performed; and

c. Include essential data on each patient having that particular condition; ~~and~~

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member; ~~and~~

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written protocol

regarding ~~for~~ organ procurement for transplant; ~~in consultation with an organ procurement agency, that encourages organ donation and identifies potential organ donors.~~

(b) If a patient has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria ~~for~~ developed in consultation with the organ procurement agency ~~for~~ identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or the administrator's ~~his~~ designee to notify the organ procurement agency of a potential organ donor; and

4. Procedures by which the patient's attending physician or designee shall document in the patient's medical record ~~that~~:

a. If the patient is a potential donor, that the organ procurement agency has been notified; or

b. The contraindications to donation. ~~[5. Procedures for the hospital administrator or his designee to report to the Cabinet for Health Services, Office of the Inspector General, information about the possible sale, purchase, or brokering of a transplantable organ, as required by KRS 311.241(3).]~~

(d) A patient with impending or declared brain death or cardiopulmonary death, as determined pursuant to KRS 446.400, shall not be a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) An ~~The~~ attending medical staff member shall assume ~~full~~ responsibility for diagnosis and care of his or her patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization, subject to this paragraph:

1. If a patient is admitted by a practitioner identified in 42 C.F.R. 482.12(c)(4):

a. The patient shall be under the care of the practitioner for any condition that is specifically within the scope of practice of the practitioner as that scope is defined by the medical staff and permitted by state law; and

b. A doctor of medicine or doctor of osteopathy shall be responsible for care of the patient for any condition beyond the scope of the admitting practitioner's license.

2. If a patient is admitted by a non-physician licensed practitioner identified at 42 U.S.C. 1395u(b)(18)(C), a doctor of medicine or doctor of osteopathy shall be responsible for diagnosis and care of the patient.

(c) Other qualified personnel may:

1. Complete medical histories;

2. Perform physical examinations; or

3. Record findings ~~and~~ compiler discharge summaries; ~~in accordance with the:~~

a. Practitioner's ~~their~~ scope of practice; and

b. the Hospital's protocols and bylaws.

(d) ~~(e)~~ A complete history and physical examination shall be conducted according to the requirements of KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint and ~~;~~ the major reason for hospitalization;

b. A history of the patient's:

(i) Present illness;

(ii) Past illnesses;

(iii) Surgeries;

(iv) Medications;

(v) Allergies;

(vi) Social history;

(vii) Occupational history;

(viii) Travel history; and

(ix) Immunizations;

c. A review of the patient's anatomical systems and level of function at the time of the exam;

d. ~~The~~[A] patient's vital signs; and
e. A general observation of the patient's:
(i) Alertness;
(ii) Debilities; and
(iii) Emotional behavior[.];
2. The results of the history and physical examination shall be:
a. Recorded;
b.[.]; Reviewed for accuracy[.]; and
c. Signed by the practitioner conducting the examination.
~~(e)~~[(d)] The attending medical staff member shall:
1. State his or her final diagnosis;
2.[.]; Assure that the discharge summary is completed; and
3. Sign the records within thirty (30) calendar days following the patient's discharge.
~~(f)~~[(e)] Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.
~~(g)~~[(f)] There shall be sufficient medical staff coverage for all clinical services of the hospital, in keeping with their size and scope of activity.
(2) Nursing service.
(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.
~~(b)~~ A registered nurse~~[-, preferably one who has a bachelor of science degree in nursing,]~~ shall serve as director of the nursing department.
~~(c)~~[(b)] There shall be a registered nurse on duty at all times.
1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.
2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.
3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital, in keeping with their size and scope of activity.
4. Persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.
~~(d)~~[(c)] The hospital shall have written nursing care procedures and written nursing care plans for patients.
~~(e)~~ Patient care shall be carried out in accordance with:
1. Attending medical staff member's orders;
2.[.]; Nursing process[.]; and
3. Nursing care procedures.
~~(f)~~[4.] The nurse shall evaluate the patient using standard nursing procedure.
~~(g)~~[2.] A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.
~~(h)~~[3.] Nursing notes shall be:
1. Written and signed on each shift by nursing staff[persons] rendering care to patients;
2.~~[-The notes shall be]~~ Descriptive of the nursing care given; and
3.~~[shall]~~ Include information and observations of significance that[which] contribute to the continuity of patient care.
~~(i)~~[4.] A medication shall be administered only by a:
1.~~[a.]~~ Registered nurse;
2.~~[b.]~~ Physician;
3.~~[c.]~~ Dentist;
4.~~[d.]~~ Physician's assistant;
5.~~[e.]~~ Advanced practice registered nurse;
6.~~[f.]~~ Licensed practical nurse under the supervision of a registered nurse; ~~[or]~~
7.~~[g.]~~ Paramedic acting within his or her statutory scope of practice[.]; and in accordance with the hospital's operating policies and procedures; or
8. Nurse extern in accordance with 201 KAR 20:400.
~~(j)~~[5.] Except in a circumstance that requires a verbal order, a medication, diagnostic test, or treatment shall not be given without a written order signed by a physician, dentist, or other ordering personnel acting within his or her[their] statutory scope of practice.

~~(k)~~[a.] A verbal order for a medication shall be:
1. Given only to a licensed practical or registered nurse, paramedic, or pharmacist; and
2.~~[shall be]~~ Signed by a member of the medical staff or other ordering practitioner[.]; ~~(j)~~ as soon as possible after the order was given[.]; or ~~(j)~~ if the patient was discharged prior to the order being authenticated, within thirty (30) calendar days of the patient's discharge.
~~(l)~~[b.] A verbal order for a diagnostic test or treatment order may be given to a licensed practitioner acting within his or her statutory scope of practice and the hospital's protocols.
~~(m)~~[c.] A person receiving a verbal order for medication, a diagnostic test, or treatment shall, at the time the order is received:
1. ~~(j)~~ Immediately transcribe the order;
2. ~~(j)~~ Repeat the order to the person issuing the order; and
3. ~~(j)~~ Annotate the order on the patient's medical record, as repeated and verified.
~~(n)~~ A[6.] patient restraint[restraints] or protective device[devices], other than bed rails, shall not be used except:
1.[.] In an emergency until the attending medical staff member can be contacted[.]; or 2. Upon a written or telephone order[orders] of the attending medical staff member.
~~(o)~~ If a patient restraint is necessary, the least restrictive form of protective device shall be used that[which] affords the patient the greatest possible degree of mobility and protection.
~~(p)~~ A locking restraint shall not be used under any circumstances.
~~(q)~~[7.] Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, infection control, employee health policies, and administrative policies.
~~(r)~~ Written minutes of all meetings shall be kept.
(3) Dietary services.
(a) The hospital shall have a dietary department[.]; organized, directed, and staffed to provide quality food service and optimal nutritional care.
~~(b)~~[4.] The dietary department shall be directed on a full-time basis by an individual who[.] by education, or specialized training and experience, shall be[is] knowledgeable in food service management.
~~(c)~~[2.] The dietary service shall have at least one (1) registered~~[-, certified]~~ or registry-eligible dietician working full-time, part-time, or on a consultative basis[.] to supervise the nutritional aspects of patient care.
~~(d)~~[3.] Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.
~~(e)~~[4.] The dietary department shall have current written policies and procedures for food storage, handling, and preparation.
~~(f)~~ Written dietary policy and procedure shall be available to dietary personnel.
~~(g)~~[5.] An in-service training program that includes~~[-which shall include]~~ the proper handling of food, safety, and personal grooming[.] shall be given at least quarterly for new dietary employees.
~~(h)~~[(b)] Menus shall be planned, written, and rotated to avoid repetition.
~~(i)~~ Nutritional needs shall be met in accordance with:
1. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and
2.~~[in accordance with]~~ The medical staff member's orders.
~~(j)~~ [(e)] Each meal shall correspond with the posted menu.
~~(k)~~ If[When] a change is necessary, substitution shall provide equal nutritive value and the change shall be recorded on the menu.
~~(l)~~ Each menu shall be kept on file for thirty (30) calendar days.
~~(m)~~[(d)] Every diet, regular or[and] therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within his or her[their] statutory scope of practice.
~~(n)~~ Information on the diet order shall be specific and complete and~~[shall]~~ include:
1. The title of the diet;

2. Modifications in specific nutrients stating the amount to be allowed in the diet; and

3. Specific problems that may affect the diet or eating habits.

(d)(e) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance;

2. and shall be Served at the proper temperatures; and

3. Prepared in a form such as cut, chopped, or ground to meet individual needs.

(d)(f) If a patient refuses foods served, a nutritious substitution shall be offered.

(d)(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member.

(d)(h) Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(d)(i) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(d)(j) There shall be an identification system for patient trays and methods used to assure that each patient receives the appropriate diet as ordered.

(d)(k) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005, the Kentucky food code.

(4) Laboratory services.

(a) The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities, and equipment to perform services commensurate with the hospital's needs for its patients.

(b) Anatomical pathology services and blood bank services shall be available in the hospital or by arrangement with other facilities.

1. Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope, and nature of the hospital.

a. Equipment necessary to perform the basic tests shall be provided by the hospital.

b. Equipment shall be in good working order, routinely checked, and precise in terms of calibration.

c. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, immunology, and immunohematology and clinical microscopy.

d. Some Services may be provided through arrangement with another licensed hospital that has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to 42 C.F.R. Part 493, KRS 333.030, and relevant administrative regulations.

e. The original report from a test performed by an outside laboratory shall be contained in the patient's medical record.

f. Laboratory facilities and services shall be available at all times.

g. Emergency laboratory services shall be available twenty-four (24) hours a day, seven (7) days a week, including holidays, in the hospital or through arrangement as specified in clause d. of this subparagraph.

h. The conditions, procedures, and availability of a service performed by an outside laboratory shall be in writing and available in the hospital.

i. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists, and technicians to perform promptly and proficiently the tests requested of the laboratory.

j. The laboratory shall not perform a procedure or test outside the scope of training of the laboratory personnel.

k. Laboratory services shall be under the direction of a:

(i) Pathologist;

(ii) Doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(iii) Laboratory specialist with a doctoral degree in physical, chemical, or biological sciences, and training and experience in clinical laboratory services.

l. A signed report of each laboratory service provided shall

be filed with the patient's medical record.

(i) A duplicate copy shall be kept in the department.

(ii) Each laboratory report shall be signed by the technologist who performed the test. Every request for a laboratory test shall be ordered and signed by qualified personnel in accordance with his or her scope of practice and the hospital's protocols and bylaws.

2. Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital, either in the hospital or under arrangement as specified in subparagraph 1.d. of this paragraph.

a. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, part-time, or on a regular consultative basis.

b. If the supervision is provided on a consultative basis, the hospital shall provide for at least monthly consultative visits by a pathologist.

c. The pathologist shall participate in staff, departmental, and clinicopathologic conference.

d. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

e. Except for exclusions listed in written policies of the medical staff, tissues removed at surgery shall be examined macroscopically, and if necessary, microscopically by the pathologist.

f. A list of tissues that do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

g. A tissue file shall be maintained in the hospital.

h. In the absence of a pathologist, there shall be an established plan for sending tissue requiring examination to a pathologist outside the hospital if examination is required.

i. A signed report of a tissue examination shall be filed promptly with the patient's medical record.

j. A duplicate copy shall be kept in the department.

k. Each report of a macroscopic or microscopic examination performed shall be signed by the pathologist.

l. Examination results shall be filed promptly in the patient's medical record.

m. The medical staff member requesting the examination shall be notified promptly.

n. A duplicate copy of each examination report shall be filed in the laboratory in a manner that permits ready identification and accessibility.

3. The laboratory shall meet the proficiency testing and quality control provisions in accordance with the certification requirements of 42 C.F.R. Part 493, U.S.C. Part 263a.

4. Blood bank. Facilities for procurement, safekeeping, and transfusion of blood and blood products shall be provided or shall be readily available.

a. The hospital shall maintain proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

b. For emergency situations, the hospital shall:

(i) Maintain at least a minimum blood supply in the hospital at all times; and

(ii) Be able to obtain blood quickly from community blood banks or institutions.

c. If the hospital provides donor services, the hospital shall have an up-to-date list of donors and equipment necessary to obtain blood from them.

d. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer, and availability of blood products between the hospital and donor center.

e. There shall be a provision for:

(i) Prompt blood typing and cross-matching; and

(ii) Laboratory investigation of transfusion reactions, either through the hospital or by arrangement with others on a continuous basis, under the supervision of a physician.

f. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be:

(i) Regularly inspected and tested; and

~~(ii)~~ ~~(shall be otherwise)~~ Safe and adequate. Inspections of the alarm system shall be documented.

g. ~~[6.]~~ Records shall be kept on file indicating the receipt and disposition of blood provided to patients in the hospital.

h. ~~[7.]~~ A committee of the medical staff, or its equivalent, shall:

~~(i)~~ Review transfusions of blood or blood derivatives; and

~~(ii)~~ ~~[shall]~~ Make recommendations concerning policies governing transfusion practices.

i. ~~[8.]~~ Samples of each unit of blood used at the hospital shall be retained ~~[according to the instructions of the committee indicated in subparagraph 7 of this paragraph,] for further testing if there was [in the event of] an adverse reaction.~~

j. Blood not retained ~~that [which]~~ has exceeded its expiration date shall be disposed of promptly.

k. ~~[9.]~~ The review committee shall:

~~(i)~~ Investigate each transfusion reaction occurring in the hospital; and

~~(ii)~~ ~~[shall]~~ Make recommendations to the medical staff regarding improvement in transfusion procedure.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distribution of pharmaceuticals in accordance with state and federal law.

~~(b)~~ ~~[4.]~~ A hospital that maintains a pharmacy for compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

~~(c)~~ ~~[a.]~~ The pharmacist shall be responsible for supervising and coordinating the activities of the pharmacy department.

~~(d)~~ ~~[b.]~~ Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

~~(e)~~ ~~[2.]~~ A hospital ~~that does not maintain [not maintaining]~~ a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies, and equipment.

1. Prescription medications shall be dispensed by a registered pharmacist elsewhere.

2. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

~~(f)~~ ~~[a.]~~ The consulting pharmacist shall assist in drawing up correct procedures and directions for the distribution of drugs.

~~(g)~~ The consulting pharmacist shall visit the hospital on a regularly scheduled basis in the course of his or her duties.

~~(h)~~ ~~[b.]~~ The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

~~(i)~~ ~~[(b)]~~ Records shall be kept of the transactions of the pharmacy or drug room ~~and [shall be] correlated with other hospital records if [where] indicated.~~

~~(j)~~ ~~[4.]~~ The pharmacy shall establish and maintain a system of records and bookkeeping in accordance with accounting procedures and policies of the hospital for:

1. Maintaining adequate control over the requisitioning and dispensing of drugs and drug supplies; and

2. ~~[for]~~ Charging patients for drugs and pharmaceutical supplies.

~~(k)~~ ~~[2.]~~ A record of the stock on hand and of the dispensing of every controlled substance shall be maintained to ensure ~~[in such a manner] that the disposition of any particular item may be readily traced.~~

~~(l)~~ ~~[(e)]~~ The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order ~~[.]~~ or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for, and disposition of, unused medications or special prescriptions returned to the pharmacy if [as a result of]:

a. The ~~[discharge of the] patient is discharged;~~ or

b. The medication or prescription does not meet requirements for sterility or labeling;

5. Emergency pharmaceutical services; and

6. Reporting adverse medication reactions to the;

a. ~~Appropriate committee of the medical staff; and~~

b. ~~Food and Drug Administration MedWatch Program.~~

~~(m)~~ ~~[(d)]~~ Therapeutic ingredients of medications dispensed shall be favorably evaluated in the:

1. United States Pharmacopoeia;

2. National Formulary; or

3. United States Homeopath-Pharmacopoeia; ~~[4. New drugs;~~

~~or~~

~~5. Accepted dental remedies.]~~ Other necessary medication shall be approved for use by the appropriate committee of the medical staff.

~~(n)~~ ~~[(e)]~~ A pharmacist shall be responsible for determining specifications and choosing acceptable sources for drugs ~~[.]~~ with approval of the appropriate committee of the medical staff.

~~(o)~~ ~~[(f)]~~ There shall be available a formulary or list of drugs accepted for use in the hospital, ~~[which shall be] developed and amended as necessary [at regular intervals] by the appropriate committee of the medical staff.~~

(6) Radiology services.

(a) The hospital shall have:

1. Diagnostic radiology facilities currently licensed or registered pursuant to ~~the Kentucky Radiation Control Act of 1978 ([KRS 211.842 to 211.852]);~~

2. At least one (1) fixed diagnostic x-ray unit capable of general x-ray procedures;

3. A radiologist on at least a consulting basis to:

a. Function as medical director of the department; and

b. Interpret films requiring specialized knowledge for accurate reading; and

4. Personnel adequate to supervise and conduct services, including one (1) certified radiation operator who shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

~~(c)~~ ~~[4.]~~ Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

~~(d)~~ ~~[2.]~~ Radiologic services shall be performed only upon the written order of qualified personnel in accordance with the:

1. Professional's [their] scope of practice; and

2. [the] Hospital's protocols and bylaws;

~~(e)~~ ~~[and]~~ The written order shall contain a concise statement of the reason for the service or examination.

~~(f)~~ ~~[3.]~~ Reports of interpretations shall be written or dictated and signed by the radiologist.

~~(g)~~ ~~[4.]~~ Only an individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B [a certified radiation operator], under the direction of medical staff members, if necessary, shall use any x-ray apparatus or material. Uses include application, administration, and removal of:

1. Radioactive elements;

2. ~~[.]~~ Disintegration products ~~[.]~~ and

3. Radioactive isotopes.

~~(h)~~ An individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B [A certified radiation operator], under the direction of a physician, may administer medications allowed within:

1. The professional's [their professional] scope of practice; and

2. [the] Context of radiological services and procedures being performed.

~~(i)~~ ~~[(e)]~~ The radiology department shall be free of hazards for patients and personnel.

~~(j)~~ Proper safety precautions shall be maintained against:

1. Fire and explosion hazards;

2. ~~[.]~~ Electrical hazards; and

3. Radiation hazards.

(7) Physical restoration or rehabilitation service.

~~(a)~~ If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech-language pathology services, the services shall be organized and

staffed to insure the health and safety of patients.

(b)(a) A hospital ~~that provides~~^{in which} physical restoration or rehabilitation services~~are available~~ shall provide individualized techniques ~~intended~~^{required} to:

1. Achieve maximum physical function normal to the patient; ~~and~~

2. ~~Prevent~~^{while preventing} unnecessary debilitation and immobilization.

(c) The hospital shall develop~~(b)~~ written policies and procedures~~shall be developed~~ for each rehabilitation service provided.

(d) The hospital shall designate~~(c)~~ a member of the medical staff~~shall be designated~~ to coordinate restorative services provided to patients in accordance with their needs.

(e)(d) Therapeutic equipment shall be:

1. Adequate to meet the needs of the service; and

2. ~~shall be~~ In good condition.

(f)(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with ~~the practitioner's~~^{their} scope of practice and according to the hospital's protocols and bylaws.

(g)(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time, or consultative basis.

(h) The hospital shall maintain~~(g)~~ a complete therapy record~~shall be maintained~~ for each patient provided physical therapy services.

(i) The report shall be:

1. Signed by the therapist who prepared ~~the report~~^{it}; and

2. ~~Maintained in~~^{shall be a part of} the patient's medical record.

(8) Emergency services.

(a) A hospital shall develop written procedures for emergency patient care, including a requirement for:

1. Each patient requesting emergency care to be evaluated by a registered nurse;

2. At least one (1) registered nurse on duty to perform patient evaluation; and

3. A physician to be on call.

(b) A patient ~~who~~^{that} presents ~~at~~^{to} the hospital ~~for~~^{requesting} emergency services shall be triaged by a registered nurse or paramedic acting:

1. Within his or her~~statutory~~ scope of practice[;] and

2. In accordance with the hospital's formal operating policies and procedures.

(c) The medical staff of a hospital within an organized emergency department~~of service~~ shall establish and maintain a manual of policy and procedures for emergency and nursing care provided in the emergency room.

(d) ~~1-~~ The emergency service shall be under the direction of a licensed physician.

(e) Medical staff members shall be available at all times for the emergency service, either on duty or on call.

(f) Current schedules and telephone numbers shall be posted in the emergency room.

(g)~~2-~~ Nursing personnel shall be assigned to[;] or designated to cover[;] the emergency service at all times.

(h)~~3-~~ Facilities shall be provided to assure prompt diagnosis and emergency treatment.

(i) A specific area of the hospital shall be utilized for patients requiring emergency care on arrival.

(j) The emergency area shall be:

1. Located in close proximity to an exterior entrance of the facility; and

2. ~~shall be~~ Independent of the operating room suite.

(k)~~4-~~ Diagnostic and treatment equipment, drugs, and supplies shall be:

1. Readily available for the provision of emergency services; and

2. ~~shall be~~ Adequate in terms of the scope of services provided.

(l)~~5-~~ Adequate medical records shall be:

1. Kept on every patient seen in the emergency room. ~~These records shall be~~ under the supervision of the Medical Record Service; and

2. ~~If, where~~ appropriate, ~~shall be~~ integrated with inpatient and outpatient records.

(m) Emergency room records shall include at least:

1. ~~a-~~ A log listing the patient visits to the emergency room in chronological order, including:

a. ~~(i)~~ Patient identification;

b. ~~(ii)~~ Means of arrival;

c. ~~(iii)~~ Person transporting patient; and

d. ~~(iv)~~ Time of arrival;

2. ~~b-~~ History of present complaint and physical findings;

3. ~~c-~~ Laboratory and x-ray reports, ~~if~~^{where} applicable;

4. ~~d-~~ Diagnosis;

5. ~~e-~~ Treatment ordered and details of treatment provided;

6. ~~f-~~ Patient disposition;

7. ~~g-~~ Record of referrals;

8. ~~h-~~ Instructions to the patient or family for those not admitted to the hospital; and

9. ~~i-~~ Signatures of attending medical staff member, and nurse ~~if~~ ^{when} applicable.

(9) Outpatient services.

(a) A hospital with ~~an~~ organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections[;] or clinics, the number of which shall depend on the:

1. Size and degree of departmentalization of the medical staff;

2. ~~the~~ Available facilities[;] and

3. ~~the~~ Needs of the patients the outpatient department^{patient} it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies, which may include:

1. ~~such as~~ Home health agencies;

2. [;] The local health department;

3. [;] Social and welfare agencies[;] and

4. Other outpatient departments.

(d) Each service offered by the outpatient department shall be under the direction of a:

1. Physician who ~~shall be~~^{is} a member of the medical staff; or

2. Licensed healthcare practitioner qualified by education, experience, and specialized training related to the specific type of service under the practitioner's direction if the hospital has a separate director for each outpatient service.

(e)~~1-~~ A registered nurse shall be responsible for the nursing services of the outpatient department.

(f)~~2-~~ The number and type of other personnel employed shall be determined by the:

1. Volume and type of services provided; and

2. Type of patient served in the outpatient department.

(g)(e) Necessary laboratory and other diagnostic tests shall be available through:

1. The hospital;

2. A laboratory in another licensed hospital; or

3. A laboratory licensed pursuant to KRS 333.030.

(h)(f) Medical records shall be maintained and ~~if~~^{where} appropriate, coordinated with other hospital medical records.

(i)~~1-~~ The outpatient medical record shall be filed in a location that ^{which} insures ready accessibility to the:

1. Medical staff members;

2. [;] Nurses[;] and

3. Other personnel of the outpatient department.

(j)~~2-~~ Information in the medical record shall be complete and sufficiently detailed relative to the patient's:

1. History;

2. [;] Physical examination;

3. [;] Laboratory and other diagnostic tests;

4. [;] Diagnosis[;] and

5. Treatment.

(10) Surgery services.

(a) A hospital in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience, and ability to direct surgical nursing care.

(b)~~1-~~ Sufficient surgical equipment, including suction facilities

and instruments in good repair, shall be provided to assure safe and aseptic treatment of surgical cases.

(c)[2-] If flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including:

1. Use of shoes with conductive soles; and
2. Prohibition of garments or other items of silk, wool, or synthetic fibers ~~that~~which accumulate static electricity.

(d)[(b)] There shall be effective policies and procedures regarding:

1. Surgical staff privileges;
- 2.[,] Functions of the service;[,] and
3. Evaluation of the surgical patient.

(e)[4-] Surgical privileges shall be delineated for each member of the medical staff ~~performing~~doing surgery in accordance with the competencies of each staff member.

(f)[-,and] A roster of medical staff specifying the surgical privileges of each shall be maintained.

(g)[2-] Except in emergency~~emergencies~~, a surgical operation or other hazardous procedure shall be performed only on written consent of the patient or the patient's~~his~~ legal representative.

(h)[3-] The operating room register shall:

1. Be complete and up to date; and
- 2.~~[-It shall]~~ Include the following:
 - a. Patient's name;
 - b. Hospital room number;
 - c. Preoperative and postoperative diagnosis;
 - d. Complications, if any;
 - e. Names of:
 - (i) Surgeon;
 - (ii)[,] First assistant;
 - (iii)[,] Anesthesiologist or anesthetist; and
 - (iv)[,] Scrub and circulating nurse;
 - f. Operation performed; and
 - g. Type of anesthesia.

(i)[4-] There shall be a complete history and physical workup in the chart of each~~every~~ patient prior to surgery.

(j) If the history and workup has been transcribed, but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart.

(k) The chart shall:

1. Accompany the patient to the operating suite; and
- 2.~~[shall]~~ Be returned to the patient's floor or room after the operation.

(l)[5-] An operative report describing the techniques and findings shall be:

1. Written or dictated immediately following surgery; and
- 2.~~[shall be]~~ Signed by the surgeon.

(m)[6-] Tissues removed by surgery shall be:

1. Placed in suitable solutions;
- 2.[,] Properly labeled;[,] and
3. Submitted to the pathologist for macroscopic and, if necessary, microscopic examination.

(n)[7-] An infection of a clean surgical case shall be recorded and reported to the Infection Control Program~~[appropriate committee of the medical staff]~~. The program~~[committee]~~ shall investigate~~[the matter]~~ according to established procedures for investigation and review of surgical site infections~~[a procedure previously developed by the committee]~~.

(o)[(e)] Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) A hospital that provides surgical or obstetrical services shall have anesthesia services available.

(b) Anesthesia services shall be organized under written policies and procedures regarding:

1. Staff privileges;
- 2.[,] The administration of anesthetics;[,] and
3. The maintenance of safety controls.

(c)[(b)] A physician member of the medical staff shall be the medical director of anesthesia services.

(d) If possible, the director shall be a physician specializing in anesthesiology.

(e)[(c)] If anesthetics are not administered by an

anesthesiologist, the medical staff shall designate an advanced practice~~[a medical staff anesthetist or a]~~ registered nurse who is a certified registered nurse anesthetist qualified to administer anesthetics at the direction of the operating surgeon.

(f)[(d)] A qualified medical staff member shall perform a preanesthetic physical examination for every patient requiring anesthesia services.

(g) The following shall be recorded within forty-eight (48) hours of surgery:

1. Findings of the preanesthetic physical examination;
2. An anesthetic record on a special form; and
3. A postanesthetic follow-up, with findings recorded by the:

a. Anesthesiologist; or
b.~~[-, Medical staff anesthetist, or]~~ Advanced practice registered nurse who is a certified registered nurse anesthetist.

(h)[(e)] The postanesthetic follow-up note shall:

1. Be written;
- a. Upon discharge from the postanesthesia recovery area; or
- b. Within three (3) to twenty-four (24) hours after the procedure requiring anesthesia; and

2.~~[-, The note shall]~~ Include:

- a.[4-] Blood pressure and pulse measurements;
- b.[2-] Presence or absence of the swallowing reflex and cyanosis;

c.[3-] Postoperative abnormalities or complications; and

d.[4-] The patient's general condition.

(12) Obstetrics service.

(a) A hospital providing obstetrical care shall have:

1. Adequate space;
- 2.[,] Necessary equipment and supplies;[,] and
3. A sufficient number of nursing personnel to:

a. Assure safe and aseptic treatment of mothers and newborns; and

b.~~[to]~~ Provide protection from infection and cross-infection.

(b)[4-] The obstetrics service shall be under the:

1. Medical direction of a physician; and
- 2.~~[under the]~~ Supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care.

(c) If a hospital has~~[with]~~ an obstetrical caseload that does not justify a separate nursing staff, the hospital's obstetrical nurses shall be designated and~~[shall be]~~ oriented to the specific needs of obstetrical patients.

(d)[2-] A registered nurse shall be on duty in the labor and delivery unit if a patient is in the unit.

(e) Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until the patient is transferred to the maternity unit.

(f)[3-] An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and for an obstetrical emergency.

(g)[4-] Patients in labor shall be cared for in adequately equipped labor rooms.

(h)[(b)] An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery, in accordance with 902 KAR 4:020.

(i)[(e)] The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism and other inherited and congenital disorders ~~[to infants]~~.

(j)[(d)] The hospital shall have a method and procedure for the positive associative identification of the mother and infant.

(k) The identifiers shall be placed on mother and newborn in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(l)[(e)] An up-to-date register book of deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth, and weight;
2. Mother's full name, including maiden name, address, birthplace, and age at time of this birth;
3. Father's full name, birthplace, and age at time of this birth;

and

4. Full name of attending physician or nurse midwife.

(m)[(f)] Each hospital providing maternity service shall provide a nursery[which shall] not[be] used for any other purpose.

(n) Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(o)[(g)] A policy shall be established for:

1. A delivery occurring outside the delivery room; and
2. A patient with an infectious disease.

(p)[(h)] Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(q)[(i)] The hospital shall comply with the provisions of KRS 216.175 by[~~in~~] participating in surveys conducted by the cabinet for the purpose of determining the prevalence[relating to the determination] of alcohol or other substance abuse among pregnant women and newborn infants.

(j) The hospital shall comply with the provisions of KRS 216.2970 by providing an[~~in~~ conducting] auditory screening[examinations] for all newborn infants.

(13) Pediatric services.

(a) A hospital providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services.

(b) If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care.

(c) There shall be available beds and other equipment that[which] are appropriate in size for pediatric patients.

(d)[(b)] There shall be proper facilities and procedures for the isolation of children with infectious, contagious, or communicable conditions.

(e) At least one (1) patient room shall be available for isolation use.

(f)[(e)] A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(g)[(d)] Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience, and ability to direct effective pediatric nursing.

(h) Nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(i)[(e)] Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. A hospital with a psychiatric unit shall:

(a) Designate the location and number of beds to be licensed as psychiatric beds; and

(b)[shall] Meet the requirements of 902 KAR 20:180[for psychiatric hospital operations, services, and licensure administrative regulation].

(15) Chemical dependency treatment services. A hospital providing chemical dependency treatment services shall:

(a) Meet the requirements of 902 KAR 20:160, Sections 3 and 4; and

(b)[shall] Designate the location and number of beds to be used for chemical dependency treatment services.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff.

(c) The library collection shall be organized and available to the medical and nursing staff members at all times.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seeking to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and in accordance with this section.

(2)[upon the following conditions: (a)] The area of the hospital designated to provide long-term acute inpatient hospital services shall provide services in compliance with:

(a)[1-] This administrative regulation; and

(b)[2-] 42 C.F.R.[C.F.R. Section] 412.22.

(3)[(b)] A hospital wishing to provide long-term acute inpatient hospital services shall[may] request authorization from the Office of Inspector General, Cabinet for Health and Family Services.

(4) The Office of Inspector General shall conduct a survey to determine if the requirements of this section are met and [shall] notify the hospital of the survey results by letter.

Section 6. Optional Designations. A hospital shall be designated as a:

(1) Primary stroke center if the hospital meets the criteria established in KRS 216B.0425(2); or

(2) SANE-ready hospital if the hospital meets the criteria established in KRS 216B.401(1);(2) A hospital that establishes its authority to be reimbursed for Title XVIII Medicare for long-term care acute inpatient hospital services pursuant to this section, shall not receive Title XIX Medicaid reimbursement for the same services].

STEVEN D. DAVIS, Acting Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, phone 502-564-2888; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the minimum licensure requirements for the operation of and services provided by hospitals.

(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 minimum licensure requirements

for the operation of and services provided by hospitals.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by updating the requirements for infection control; removing the requirement for administrative reports to include inspection and incident investigation reports; requiring hospitals to maintain written policies that assure the reporting of cases of abuse, neglect, or exploitation of adults and children pursuant to KRS Chapters 209 and 620, including evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally to prevent further potential abuse while the investigation is in progress; expanding this administrative regulation's current use of "medical staff" beyond an organized body of physicians to include, at the discretion of the hospital's governing body, podiatrists, optometrists, chiropractors and non-physician licensed practitioners such as physician assistants, advanced practice registered nurses, and other licensed practitioners listed in 42 U.S.C. 1395u(b)(18)(C), thereby aligning this administrative regulation with the Federal Conditions of Participation for Hospitals to permit the above licensed practitioners to admit patients and serve as the attending provider if certain criteria is met; requiring hospitals to comply with the requirements of SB 129 from the 2017 legislative session, enacted as KRS 216B.230 to 216B.239, and provide each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver; removing the tuberculin skin testing requirements from this administrative regulation and replacing those requirements with a cross-reference to 902 KAR 20:205; requiring hospitals to maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended; allowing nurse externs to administer medications in hospitals; allowing a licensed health care practitioner qualified by education, experience, and specialized training to serve as the director, in lieu of a physician, of an outpatient department if the hospital has a separate director for each outpatient service; and making changes to comply with the drafting and formatting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment makes necessary updates to enhance the delivery of efficient medical care.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042(1)(b) by establishing the minimum licensure requirements for the operation of and services provided by hospitals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 216B.042(1)(b) by establishing the requirements for licensure as a hospital in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as hospitals.

(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: Hospitals must comply with the reporting requirements of KRS Chapter 209 and 620, as well as comply with the requirements of SB 129 to provide each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver. Hospitals' governing authorities may appoint certain licensed practitioners to its medical staff. Hospitals may employ nurse externs to administer medications.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pursuant to this amendment and the proposed amendment of 201 KAR 20:400, Kentucky-licensed hospitals may employ non-licensed nursing student externs under the supervision of a registered nurse. The nursing student externs may administer medications in the hospital upon demonstration of clinical competence, which allows the extern to act in a supportive role to the registered nurse as well as gain clinical experience.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as hospitals. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation during subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 482.12(c)(1), 42 C.F.R. 493, 45 C.F.R. 160,

164, 42 U.S.C. 1320d-2 - 1320d-8, 42 U.S.C. 1395x(r)(2) – (5), 42 U.S.C. 1395u(b)(18)(C)

2. State compliance standards. KRS 216B.042

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 482 establishes the Conditions of Participation that hospitals must meet to participate in the Medicare and Medicaid Programs. 42 C.F.R. 482.12(c)(1) establishes federal requirements for a hospital's governing body. 42 C.F.R. 493 is the section of the federal regulations titled "Standards and Certification: Laboratory Requirements", issued by the Centers for Medicare and Medicaid Services to enact the CLIA law that establishes quality standards for laboratory testing performed on specimens from humans, such as blood, body fluid, and tissue, for the purpose of diagnosis, prevention, or treatment of disease, or assessment of health. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. 42 U.S.C. 1395x(r)(2) – (5) and 42 U.S.C. 1395u(b)(18)(C) are federal Medicare laws that describe what types of licensed practitioners may be appointed to the medical staff of a hospital.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(Amendment)**

907 KAR 17:005. Definitions for 907 KAR Chapter 17.

RELATES TO: KRS Chapter 13B, 194A.025(3), 199.555(2), Chapter 202A, 205.8451-205.8483, 311.550(12), 314.011(7), 387.510(15), 620.020(5), 42 U.S.C. 1382c, 1395tt, 1396-1396w-5[1396n(e)], 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 412.62, Part 438, 440.40(b), 447.280, 482.58

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the definitions for 907 KAR Chapter 17[, which apply to the policies and procedures relating to the provision of Medicaid services through contracted managed care organizations pursuant to, and in accordance with, 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438].

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(4) ["Aged" means at least sixty-five (65) years of age.

(5) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(5) [(6)] "Authorized representative" means:

(a) For an enrollee who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the enrollee; or

(b) A legal guardian.

(6) [(7)] "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance use[abuse] disorder.

(7) [(8)] "Blind" is defined by 42 U.S.C. 1382c(a)(2).

(8) [(9)] "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

(9) [(10)] "Capitation rate" means the negotiated amount to be paid on a monthly basis by the department to an MCO:

(a) Per enrollee; and

(b) Based on the enrollee's aid category, age, and gender.

(14)] "Care coordination" means the integration of all processes in response to an enrollee's needs and strengths to ensure the:

(a) Achievement of desired outcomes; and

(b) Effectiveness of services.

(10) [(12)] "Case management" means a collaborative process that:

(a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;

(b) Is characterized by advocacy, communication, and resource management;

(c) Promotes quality and cost-effective interventions and outcomes; and

(d) Is in addition to and not in lieu of targeted case management for individuals pursuant to 907 KAR Chapter 15[:

1. Adults with a chronic mental illness pursuant to 907 KAR 1:515; or

2. Children with a severe emotional disability pursuant to 907 KAR 1:525].

(11) [(13)] "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.

(12) [(14)] "Child" means a person who:

(a) 1. Is under the age of eighteen (18) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D);[or]

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient; or

(d) Is under the age of twenty-one (21) years for EPSDT.

(13) [(15)] "Chronic Illness and Disability Payment System" means a diagnostic classification system that Medicaid programs use to make health-based, capitated payments for TANF and Medicaid beneficiaries with a disability.

(16) "Commission for Children with Special Health Care Needs" or "CCSHCN" means the Title V agency which provides specialty medical services for children with specific diagnoses and health care needs that make them eligible to participate in programs sponsored by the CCSHCN, including the provision of medical care.

(17) "Community mental health center" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

(18)] "Complex or chronic condition" means a physical, behavioral, or developmental condition that[which]:

(a) May have no known cure;

(b) Is progressive; or

(c) Can be debilitating or fatal if left untreated or under-treated.

(14) [(19)] "Consumer Assessment of Healthcare Providers and Systems" or "CAHPS" means a program that develops

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

standardized surveys that ask consumers and patients to report on and evaluate their experiences with health care.

(20)] "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.

(15)](24)] "DAIL" means the Department for Aging and Independent Living.

(16)](22)] "DCBS" means the Department for Community Based Services.

(17)](23)] "Department" means the Department for Medicaid Services or its designee.

(18)](24)] "Disabled" is defined by 42 U.S.C. 1382c(a)(3).

(19)](25)] "DSM-IV" means a manual published by the American Psychiatric Association that covers all mental health disorders for both children and adults.

(20)](26)] "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.

(21)](27)] "Early and periodic screening, diagnosis, and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(22)](28)] "Emergency service" means "emergency services" as defined by 42 U.S.C. 1396u-2(b)(2)(B).

(23)](29)] "Encounter" means a health care visit of any type by an enrollee to a provider of care, drugs, items, or services.

(30)] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(24)](31)] "External quality review organization" or "EQRO":

(a) Is defined by 42 C.F.R. 438.320; and

(b) Includes any affiliate or designee of the EQRO.

(32)] "Family planning service" means a counseling service, a medical service, or a pharmaceutical supply or device to prevent or delay pregnancy.

(25)](33)] "Federally qualified health center" or "FQHC" is defined by 42 C.F.R. 405.2401(b).

(26)] "Federally qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally qualified health center look-alike.

(27)](34)] "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(28)](35)] "Foster care" is defined by KRS 620.020(5).

(29)](36)] "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 to KRS 205.8483.

(30)](37)] "Grievance" is defined by 42 C.F.R. 438.400(b).

(31)](38)] "Grievance system" means a system that includes a grievance process, an appeal process, and access to the Commonwealth of Kentucky's fair hearing system.

(39)] "Health maintenance organization" is defined by KRS 304.38-030(5).

(40)] "Health risk assessment" or "HRA" means a health questionnaire used to provide individuals with an evaluation of their health risks and quality of life.

(41)] "Healthcare Effectiveness Data and Information Set" or "HEDIS" means a tool used to measure performance regarding important dimensions of health care or services.

(42)] "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

(d) Lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.

(32)](43)] "Individual with a special health care need" or "ISHCN" means an individual who:

(a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and

(b) May require a broad range of primary, specialized, medical, behavioral health, or related services.

(33)](44)] "Initial implementation" means the process of transitioning a current Medicaid or KCHIP recipient from fee-for-service into managed care.

(45)] "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(34)](46)] "Kentucky Health Information Exchange" or "KHIE" means the name given to the system that will support the statewide exchange of health information among healthcare providers and organizations according to nationally-recognized standards.

(47)] "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(35)](48)] "Marketing" means any activity conducted by or on behalf of an MCO in which information regarding the services offered by the MCO is disseminated in order to educate enrollees or potential enrollees about the MCO's services.

(49)] "Maternity care" means prenatal, delivery, and postpartum care and includes care related to complications from delivery.

(36)](50)] "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(37)](51)] "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

(38)](52)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(53)] "Medicare qualified individual group 1 (QI-1)" means an eligibility category that includes, pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a Qualified Medicaid beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who is not otherwise eligible for Medicaid under the state plan.

(39)](54)] "National Practitioner Data Bank" means an electronic repository that collects:

(a) Information on adverse licensure activities, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners; and

(b) Data on payments made on behalf of physicians in connection with liability settlements and judgments.

(55)] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2(2)(a)2, or 31:011, Section 5(12).

(40)](56)] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the

department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and ~~482.58~~[482.66].

~~(41)[(57)]~~ "Olmstead decision" means the court decision of *Olmstead v. L.C. and E.W.*, U.S. Supreme Court, No. 98-536, June 26, 1999 in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

~~(42)[(58)]~~ "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

~~(43)[(59)]~~ "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

~~(44)[(60)]~~ "Physician" is defined by KRS 311.550(12).

~~(45)[(61)]~~ "Post-stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrollee's condition.

~~(46)[(62)]~~ "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.

~~(47)[(63)]~~ "Primary care provider" or "PCP" means a licensed or certified health care practitioner who meets the description as established in 907 KAR 17:010, Section ~~6(6)~~[7(6)].

~~(48)[(64)]~~ "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

~~(49)[(65)]~~ "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

~~(50)[(66)]~~ "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

~~(51)[(67)]~~ "QAPI" means the Quality Assessment and Performance Improvement Program established in accordance with 42 C.F.R. 438 Subpart D, 438.200 to 438.242[907 KAR 17:025, Section 5].

~~(52)[(68)]~~ "Qualified alien" means an alien who, at the time of applying for or receiving Medicaid benefits, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3[1:044, Section 5(12)].

~~(53)[(69)]~~ "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

~~(54)[(70)]~~ "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

~~(55)[(71)]~~ "Quality improvement" or "QI" means the process of assuring that covered services provided to enrollees are appropriate, timely, accessible, available, and medically necessary and the level of performance of key processes and outcomes of the healthcare delivery system is improved through the MCO's policies and procedures.

~~(72)]~~ "Recipient" is defined by [in] KRS 205.8451(9).

~~(56)[(73)]~~ "Region eight (8)" means the region containing Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Whitley, and Wolfe Counties.

~~(74)]~~ "Region five (5)" means the region containing Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jackson, Jessamine, Lincoln, Madison, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford Counties.

~~(75)]~~ "Region four (4)" means the region containing Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, McCreary, Metcalfe, Monroe, Pulaski, Russell, Simpson, Taylor, Warren, and Wayne Counties.

~~(76)]~~ "Region one (1)" means the region containing Ballard,

Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, and McCracken Counties.

~~(77)]~~ "Region seven (7)" means the region containing Bath, Boyd, Bracken, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Morgan, Robertson, and Rowan Counties.

~~(78)]~~ "Region six (6)" means the region containing Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties.

~~(79)]~~ "Region three (3)" means the region containing Breckenridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties.

~~(80)]~~ "Region two (2)" means the region containing Christian, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Todd, Trigg, Union, and Webster Counties.

~~(81)]~~ "Risk adjustment" means a corrective tool to reduce both the negative financial consequences for a managed care organization that enrolls high-risk users and the positive financial consequences for a managed care organization that enrolls low-risk users.

~~(82)]~~ "Rural area" means an area not in an urban area.

~~(57)[(83)]~~ "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

~~(58)[(84)]~~ "Specialist" means a provider who provides specialty care.

~~(59)[(85)]~~ "Specialty care" means care or a service that is provided by a provider who is not:

(a) A primary care provider; or

(b) Acting in the capacity of a primary care provider while providing the service.

~~(60)[(86)]~~ "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

~~(61)[(87)]~~ "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B[and 907 KAR 4:563].

~~(62)[(88)]~~ "State plan" is defined by 42 C.F.R. 400.203.

~~(63)[(89)]~~ "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

~~(64)[(90)]~~ "State-funded adoption assistance" is defined by KRS 199.555(2).

~~(65)[(91)]~~ "Subcontract" means an agreement entered into, directly or indirectly, by an MCO to arrange for the provision of covered services, or any administrative, support or other health service, but does not include an agreement with a provider.

~~(92)]~~ "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101(c).

~~(66)[(93)]~~ "Teaching hospital" means a hospital which has a teaching program approved as specified in 42 U.S.C. 1395x(b)(6).

~~(94)]~~ "Temporary Assistance for Needy Families" or "TANF" means a block grant program which is designed to:

(a) Assist needy families so that children can be cared for in their own homes;

(b) Reduce the dependency of needy parents by promoting job preparation, work, and marriage;

(c) Prevent out-of-wedlock pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

~~(95)]~~ "Third party liability resource" means a resource available to an enrollee for the payment of expenses:

(a) Associated with the provision of covered services; and

(b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to ~~1396w-5~~[1396v].

~~(67)[(96)]~~ "Transport time" means travel time:

(a) Under normal driving conditions; and

(b) With no extenuating circumstances.

~~(68)[(97)]~~ "Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

~~(69)[(98)]~~ "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

~~(70)[(99)]~~ "Ward" is defined by [in] KRS 387.510(15). [(100)] "Women, Infants and Children program" means a federally-funded health and nutrition program for women, infants, and children.]

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: October 24, 2017
FILED WITH LRC: November 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for 907 KAR Chapter 17, which relates to managed care.

(b) The necessity of this administrative regulation: This definitions administrative regulation is necessary to define the terms used in 907 KAR Chapter 17, in accordance with KRS 13A.222(4)(d) and (e).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. KRS 13A.222(4)(d) and (e) authorize the use of definitions for terms used within a chapter of the Kentucky Administrative Regulations Service.

(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 providing the definitions for terms used throughout 907 KAR Chapter 17. Defining the terms will lead to less confusion as the regulated community will know the meanings of common terms.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 17:005 updates citations in the RELATES TO paragraph and throughout the administrative regulation; deletes extra information from the NECESSITY, FUNCTION, AND CONFORMITY paragraph; deletes the definitions of several terms no longer used in 907 KAR Chapter 17; makes changes for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A; amends the definitions of "child" to include a person who is under the age of twenty-one (21) for EPSDT; and adds a definition for "federally qualified health center look-alike."

(b) The necessity of the amendment to this administrative regulation: The amendments to this definitions administrative regulation are necessary to comply with KRS 13A.222, including the requirement that definitions only be provided for terms used

within that administrative regulations chapter; to comply with the age requirements of EPSDT; and to provide clarity in definitions and citations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. KRS 13A.222(4)(d) and (e) authorize the use of definitions for terms used within a chapter of the Kentucky Administrative Regulations Service.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the definitions for terms used throughout 907 KAR Chapter 17, while complying with KRS 13A.222 and providing correct cross-references. Additionally, defining the terms will lead to less confusion as the regulated community will know the meanings of common terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment as it simply updates the definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this definitions administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of updated (and corrected) cross-references. Additionally, because only terms used in 907 KAR Chapter 17 are included in this administrative regulation, there are not as many definitions included in this administrative regulation.

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

(a) Initially: There are no costs to implementing the definitions administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing the definitions administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not 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 is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes definitions for terms used in 907 KAR Chapter 17.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It merely establishes definitions, not requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It merely establishes definitions, not 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? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438. (Additionally, KRS 13A.222 requires the amendments made in this definitions administrative regulation to delete definitions for terms not used within 907 KAR Chapter 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? 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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services (Amendment)

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

RELATES TO: KRS Chapter 13B, 194A.025(3), 205.624, 311.621-311.643, 387.500-387.800, 42 U.S.C. 1396a, 1396n(e), 1396u-2, 42 C.F.R. 422.112, 431.51, 431.200-431.241, Part 438, 45 C.F.R. 233.100

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438[; 2012 Ky. Acts ch. 144, Part 1, § 3, b. (17)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Except as provided in subsection (3) of this section, enrollment into a managed care organization shall be mandatory for a Medicaid or KCHIP recipient.

(2) The provisions in this administrative regulation shall be applicable to a:

(a) Medicaid recipient; or

(b) KCHIP recipient.

(3) The following recipients shall not be required to enroll, and shall not enroll, into a managed care organization:

(a) A recipient who resides in:

1. A nursing facility for more than thirty (30) calendar days; or

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

(b) A recipient who is:

1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;

2. Receiving:

a. Services through the breast and cervical cancer program pursuant to 907 KAR 20:055;

b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 20:020;

c. Services through a 1915(c) home and community based services waiver program;

d. Hospice services in a nursing facility or intermediate care facility for individuals with an intellectual disability; or

e. Medicaid benefits as a Medicaid Works individual;

3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

5. A Medicare qualified individual group 1 (QI-1) individual;

6. A qualified disabled and working individual;

7. A qualified alien eligible for Medicaid benefits for a limited period of time; or

8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

(4)(a) Except for a child in foster care, a recipient who is eligible for enrollment into managed care shall be enrolled with an MCO that provides services to an enrollee whose primary residence is within the MCO's service area.

(b) A child in foster care shall be enrolled with an MCO in the county where the child's DCBS case is located.

(5)(a) ~~During the department's implementation of managed care in accordance with this administrative regulation,~~ The department shall assign a recipient to an MCO based upon an algorithm that considers:

1. Continuity of care; and

2. Enrollee preference of an MCO provider.

(b) An assignment shall focus on a need of a child or an individual with a special health care need.

(6)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.

(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO.

(7) Each member of a household shall be assigned to the same MCO.

(8) The effective date of enrollment for a recipient described in subsection (6) of this section shall be:

~~(a)] the date of Medicaid eligibility]; and~~

(b) No earlier than January 1, 2013 for region three].

(9) A recipient shall be given a choice of MCOs.

(10) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility unless the recipient moves outside of the MCO's regional coverage.

(11) A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) calendar days.

(12)(a) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:

1. Within ninety (90) calendar days of the effective date of enrollment;

2. Annually during an open enrollment period;

3. Upon automatic enrollment under subsection (10) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or

4. When the Commonwealth of Kentucky imposes an intermediate sanction specified in 42 C.F.R. 438.702(a)(3).

(b) An MCO shall accept an enrollee who changes MCOs under this section.

(13) Only the department shall have the authority to enroll a Medicaid recipient with an MCO in accordance with this section.

(14) Upon enrollment with an MCO, an enrollee shall receive an identification card issued by the MCO[two (2) identification cards].

(a) A card shall be issued from the department that shall verify Medicaid eligibility.

(b) A card shall be issued by the MCO that shall verify enrollment with the MCO].

(15)(a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) calendar days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least the following information:

1. The effective date of enrollment;
2. The name, location, and contact information of the PCP;
3. How to obtain a referral;
4. Care coordination;
5. The benefits of preventive health care;
6. The enrollee identification card;
7. A member handbook; and
8. A list of covered services.

(16) Enrollment with an MCO shall be without restriction.

(17) An MCO shall:

- (a) Have continuous open enrollment for new enrollees; and
- (b) Accept enrollees regardless of overall enrollment.

(18)(a) Except as provided in paragraphs[paragraph] (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.

(b) A newborn shall be enrolled beginning with the newborn's date of birth.

(c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.

(d)1. Except as provided in paragraph (e) of this subsection, if an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

2.[Except as established in paragraph (f) of this subsection,] An MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual referenced in subparagraph 1. of this paragraph during the individual's retroactive eligibility period.

(e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:

1. The individual's enrollment date with an MCO shall be the first of the month following the month in which the department is

notified of the individual's retroactive eligibility for SSI benefits; and

2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits. [(f) In addition to the reimbursement obligation established in paragraph (e)2. of this subsection, the department shall be responsible for reimbursing for services provided to an individual:

1. Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), or eight (8) if the individual has a retroactive eligibility period prior to November 1, 2011; or

2. Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to January 1, 2013 for region three (3) if the individual has a retroactive eligibility period prior to January 1, 2013.

(g) The requirements established in paragraph (e)2. and (f)2. of this subsection shall be effective January 1, 2013.]

(19) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:

(a)[4-] On the first day of the month of the original application for eligibility; or

(b)[2-] On the first day of the month of retroactive eligibility as referenced in subsection (18)(d) or (e) of this section, if applicable[; and

(b) No earlier than:

1. November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), or eight (8); or

2. January 1, 2013 for region three (3)].

(20) A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department shall have the authority to disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall[:

(a) Become effective on the first day of the month following disenrollment; and

(b)] occur:

(a)[4-] If the enrollee:

1.[a-] No longer resides in an area served by the MCO;

2.[b-] Becomes incarcerated or deceased; or

3.[c-] Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or

(b)[2-] In accordance with 42 C.F.R. 438.56.

(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;

(b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2);

(c) Becomes deceased; or

(d) No longer resides in an area served by the MCO.

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).

(b) If the department fails to make a determination within the timeframe specified in paragraph (a) of this subsection, the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the:

(a) Enrollee shall be enrolled with a new MCO if the enrollee is:

1. Eligible for Medicaid; and

2. Not excluded from managed care participation; and

(b) MCO shall:

1. Assist in the selection of a new primary care provider, if requested;
 2. Cooperate with the new primary care provider in transitioning the enrollee's care; and
 3. Make the enrollee's medical record available to the new primary care provider in accordance with state and federal law.
- (8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities. ~~[(1)]~~ An MCO shall have written policies and procedures:

- (a) to protect the rights of an enrollee that ~~meets~~~~[includes the:~~
 1. ~~Protection against liability for payment in accordance with 42 U.S.C. 1396u-2(b)(6);~~
 2. ~~Rights specified in 42 C.F.R. 438.400;~~
 3. ~~Right to prepare an advance medical directive pursuant to KRS 311.621 through KRS 311.643;~~
 4. ~~Right to choose and change a primary care provider;~~
 5. ~~Right to file a grievance or an appeal;~~
 6. ~~Right to receive assistance in filing a grievance or an appeal;~~
 7. ~~Right to a state fair hearing;~~
 8. ~~Right to a timely referral and access to medically indicated specialty care; and~~
 9. ~~Right to access the enrollee's medical records in accordance with federal and state law; and~~

(b) Regarding the responsibilities of enrollees that include the responsibility to:

1. Become informed about:
 - a. Enrollee rights specified in paragraph (a) of this subsection; and
 - b. Service and treatment options;
2. Abide by the MCO's and department's policies and procedures;
3. Actively participate in personal health and care decisions;
4. Report suspected fraud or abuse; and
5. Keep appointments or call to cancel if unavailable to keep an appointment.

(2) ~~The information specified in subsection (1) of this section shall meet]~~ the information requirements established in 42 C.F.R. 438.10 and the negotiated terms of the contract between the MCO and the department.

Section 4. MCO Internal Appeal Process. (1) ~~An MCO shall have written policies and procedures describing how an enrollee shall submit a request for:~~

- (a) A grievance with the MCO;
- (b) An appeal with the MCO; or
- (c) A state fair hearing in accordance with KRS Chapter 13B.

(2) ~~An enrollee may~~~~[shall have thirty (30) calendar days from the date of an event causing dissatisfaction to]~~ file a grievance orally or in writing with the MCO at any time.

(a) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(b) An investigation and final resolution of a grievance shall:

1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and
2. Include a resolution letter to the enrollee that shall include:
 - a. All information considered in investigating the grievance;
 - b. Findings and conclusions based on the investigation; and
 - c. The disposition of the grievance.

(2) ~~[(3)]~~ An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).

(3) ~~[(4)]~~(a) A provider shall not be an authorized representative of an enrollee without the enrollee's written consent for the specific action that is being appealed or that is the subject of a state fair hearing.

(b) 1. For authorized representative purposes, written consent

unique to an appeal or state fair hearing shall be required for the appeal or state fair hearing.

2. A single written consent shall not qualify as written consent for more than one (1):

- a. Hospital admission;
- b. Physician or other provider visit; or
- c. Treatment plan.

(4) ~~[(5)]~~ A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (3) ~~[(4)]~~ of this section shall have the right to file an appeal on behalf of the enrollee.

(5) ~~[(6)]~~ An enrollee shall have ~~sixty (60)~~~~[thirty (30)]~~ calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.

(6) ~~[(7)]~~ An MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.

(7) ~~[(8)]~~ An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action is treated as an appeal to establish the earliest possible filing date for the appeal.

(8) ~~[(9)]~~ An oral appeal shall be followed by a written appeal that is signed by the enrollee or an individual listed in subsection (4) ~~[(5)]~~ of this section within ten (10) calendar days.

(9) ~~[(10)]~~(a) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution. A copy of this information shall also be sent to an individual listed in subsection (4) ~~[(5)]~~ of this section, if applicable.

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution has been requested.

(10) ~~[(11)]~~ An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (6) ~~[(7)]~~ of this section by fourteen (14) calendar days if:

- (a) The enrollee requests the extension; or
- (b) 1. The MCO demonstrates to the department that there is need for additional information; and
2. The extension is in the enrollee's interest.

(11) ~~[(12)]~~ For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.

(12) ~~[(13)]~~(a) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.

(b) The provider shall:

1. Give a copy of the notice to the enrollee; or
2. Inform the enrollee of the provisions of the notice.

(13) ~~[(14)]~~ An MCO shall:

(a) Continue to provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:

1. The enrollee withdraws the appeal;
2. Fourteen (14) calendar days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or
3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals if the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:

1. The enrollee requests the extension; or
2. a. The MCO demonstrates to the department that there is need for additional information; and
- b. The extension is in the enrollee's interest.

(14) ~~[(15)]~~ For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the

extension.

~~(15)~~~~(16)~~ If an MCO denies a request for an expedited resolution of an appeal, ~~the MCO~~~~[it]~~ shall:

(a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;

(b) Give prompt oral notice of the denial; and

(c) Follow up with a written notice within two (2) calendar days of the denial.

~~(16)~~~~(17)~~ An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.

~~(17)~~~~(18)~~ An MCO shall:

(a) ~~Provide information specified in 42 C.F.R. 438.10(g)(1) about the grievance system to a service provider and a subcontractor at the time they enter into a contract;~~

(b) ~~Maintain a grievance or an appeal file in a secure and designated area;~~

(c) ~~Make a grievance or an appeal file accessible to the department or its designee upon request;~~

(d) ~~Retain a grievance or an appeal file for ten (10) years following a final decision by the MCO, the department, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later;~~

(e) ~~Have procedures for assuring that a grievance or an appeal file contains:~~

- ~~1. Information to identify the grievance or appeal;~~
- ~~2. The date a grievance or appeal was received;~~
- ~~3. The nature of the grievance or appeal;~~
- ~~4. A notice to the enrollee of receipt of the grievance or appeal;~~
- ~~5. Correspondence between the MCO and the enrollee;~~
- ~~6. The date the grievance or appeal is resolved;~~
- ~~7. The decision made by the MCO of the grievance or appeal;~~
- ~~8. The notice of a final decision to the enrollee; and~~
- ~~9. Information pertaining to the grievance or appeal; and~~
- ~~(f) Make available to an enrollee documentation regarding a grievance or an appeal.~~

~~(19)~~ An MCO shall designate an individual to:

(a) ~~Execute the policies and procedures for resolution of a grievance or appeal;~~

(b) ~~Review patterns or trends in grievances or appeals; and~~

(c) ~~Initiate a corrective action, if needed.~~

~~(20)~~ If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).

~~(18)~~~~(21)~~(a) The requirements and policies stated in this section~~[of this administrative regulation]~~ regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is stated in this section~~[of this administrative regulation]~~, the requirement or policy stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department's State Fair Hearing for an Enrollee. (1) An enrollee shall have a right to a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO's internal appeal process.

(2) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563; 42 C.F.R. 438, Subpart F ~~(438.400-438.424)~~; and 42 C.F.R. 431, Subpart E ~~(431.200-431.250)~~.

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:

1. Be in writing and specify the reason for the request;
2. Indicate the date of service or the type of service denied; and

3. Be postmarked or filed within 120 calendar~~(forty-five (45))~~ days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) calendar days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

(a) Comply with the requirements of:

1. Section 4 of this administrative regulation; or
2. Subsection (4) of this section; or

(b) Participate in and present evidence at the state fair hearing.

Section 6.~~[Member Services.~~ (1) An MCO shall have a member services function that includes a member call center and a behavioral health call center that shall:

(a) Be staffed Monday through Friday from 7:00 a.m. to 7:00 p.m. Eastern Time; and

(b) Meet the call center standards, which shall:

1. Be approved by the American Accreditation Health Care Commission or Utilization Review Accreditation Committee (URAC); and

2. Include provisions addressing the call center abandonment rate, blockage rate, and average speed of answer.

(2)(a) An MCO shall provide access to medical advice to an enrollee through a toll-free call-in system, available twenty-four (24) hours a day, seven (7) days a week.

(b) The call-in system shall be staffed by medical professionals to include:

1. Physicians;
2. Physician assistants;
3. Licensed practical nurses; or
4. Registered nurses.

(3) An MCO shall:

(a) Provide foreign language interpreter services, free of charge, for an enrollee;

(b) Respond to the special communication needs of the disabled, blind, deaf, or aged;

(c) Facilitate direct access to a specialty physician for an enrollee:

1. With a chronic or complex health condition;
2. Who is aged, blind, deaf, or disabled; or
3. Identified as having a special healthcare need and requiring a course of treatment or regular healthcare monitoring;

(d) Arrange for and assist with scheduling an EPSDT service in conformance with federal law governing EPSDT;

(e) Provide an enrollee with information or refer the enrollee to a support service;

(f) Facilitate direct access to a covered service in accordance with 907 KAR 17:020;

(g) Facilitate access to a:

1. Behavioral health service;
2. Pharmaceutical service; or
3. Service provided by a public health department, community mental health center, rural health clinic, federally qualified health center, the Commission for Children with Special Health Care Needs, or a charitable care provider;

(h) Assist an enrollee in:

1. Scheduling an appointment with a provider;
2. Obtaining transportation for an emergency or non-emergency service;
3. Completing a health risk assessment; or
4. Accessing an MCO health education program;

(i) ~~Process, record, and track an enrollee grievance and appeal; or~~

(j) ~~Refer an enrollee to case management or disease management.~~

Section 7.] Enrollee Selection of Primary Care Provider. (1) Except for an enrollee described in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have, but may request, a primary care provider:

- (a) A dual eligible;
- (b) A child in foster care;
- (c) A child under the age of eighteen (18) years who is disabled;~~[or]~~
- (d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 20:050; or

(e) An adult for whom the state is appointed a guardian[1-840].

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) calendar days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

- a. Has historically provided services to the enrollee; and
- b. Meets the requirements of subsection (6) of this section.

(b) If no primary care provider meets the requirements of paragraph (a)2, of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:

- 1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence if the enrollee is in an urban area; or
- 2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and

is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) calendar days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) calendar days of the second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee has not chosen a primary care provider within thirty (30) calendar days after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) calendar days of the enrollee's initial enrollment.

(5)(a) An enrollee shall be allowed to select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two (2) primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within the provider's scope of licensure or certification, including:

- 1. A physician;
- 2. An advanced practice registered nurse;
- 3. A physician assistant; or
- 4. A clinic, including a primary care center, federally qualified health center, federally qualified health center look-alike, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.

(7) Upon enrollment in an MCO, an enrollee shall have the right to change primary care providers:

- (a) Within the first ninety (90) calendar days of assignment;
- (b) Once a year regardless of reason;
- (c) At any time for a reason approved by the MCO;
- (d) If, during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;
- (e) If Medicare or Medicaid imposes a sanction on the PCP;
- (f) If the PCP is no longer in the MCO provider network; or
- (g) At any time with cause, which shall include the enrollee:
 - 1. Receiving poor quality of care;
 - 2. Lacking access to providers qualified to treat the enrollee's medical condition; or

3. Being denied access to needed medical services.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following reasons:

- (a) A change in the enrollee's health status or treatment needs;
- (b) An enrollee's utilization of health services;
- (c) An enrollee's diminished mental capacity; or
- (d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO shall have the authority to approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

(a) A family planning service in accordance with 42 C.F.R. 431.51;

(b) An emergency service in accordance with 42 C.F.R. 438.114;

(c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c); or

(d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior authorization requirements of the MCO.

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) calendar days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) calendar days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 7[8]. Member Handbook.[14] An MCO shall:

~~(a) send a member handbook to an enrollee as required by 42 C.F.R. 438.10 and the negotiated terms of the contract between the MCO and the department, by a method that shall not take more than three (3) days to reach the enrollee, within five (5) business days of enrollment;~~

~~(b) Review the member handbook at least annually;~~

~~(c) Communicate a change to the member handbook to an enrollee in writing; and~~

~~(d) Add a revision date to the member handbook after revising the member handbook.~~

~~(2) A member handbook shall:~~

~~(a) Be available:~~

~~1. In hardcopy in English, Spanish, and any other language spoken by at least five (5) percent of the potential enrollee or enrollee population; and~~

~~2. On the MCO's Web site;~~

~~(b) Be written at no higher than a sixth grade reading comprehension level;~~

~~(c) Include at a minimum the following information:~~

~~1. The MCO's network of primary care providers, including the names, telephone numbers, and service site addresses of available primary care providers, and, if desired by the MCO, the names and contact information for other providers included in the MCO's network;~~

~~2. The procedures for:~~

~~a. Selecting a PCP and scheduling an initial health appointment;~~

~~b. Obtaining:~~

~~(i) Emergency or non-emergency care after hours;~~

~~(ii) Transportation for emergency or non-emergency care;~~

~~(iii) An EPSDT service;~~

~~(iv) A covered service from an out-of-network provider; or~~

~~(v) A long term care service;~~

~~c. Notifying DCBS of a change in family size or address, a birth, or a death of an enrollee;~~

~~d. Selecting or requesting to change a PCP, which shall include:~~

~~(i) A reason a request for a change may be denied by the MCO; and~~

~~(ii) A reason a provider may request to transfer an enrollee to a~~

different PCP; and

e. Filing a grievance or appeal, including the title, address, and telephone number of the person responsible for processing and resolving a grievance or appeal;

3. The name of the MCO, address, and telephone number from which it conducts its business;

4. The MCO's:

a. Business hours; and

b. Member service and toll-free medical call-in telephone numbers;

5. Covered services, an explanation of any service limitation or exclusion from coverage, and a notice stating that the MCO shall be liable only for those services authorized by the MCO, except for the services excluded in Section 7(11) of this administrative regulation;

6. Member rights and responsibilities;

7. For a life-threatening situation, instructions to use the emergency medical services available or to activate emergency medical services by dialing 911;

8. Information on:

a. The availability of maternity and family planning services, and for the prevention and treatment of sexually transmitted diseases;

b. Accessing the services referenced in clause a. of this subparagraph;

c. Accessing care before a primary care provider is assigned or chosen;

d. The Cabinet for Health and Family Services' independent ombudsman program; and

e. The availability of, and procedures for, obtaining:

(i) A behavioral health or substance abuse service;

(ii) A health education service; and

(iii) Care coordination, case management, and disease management services;

9. Direct access services that may be accessed without a referral; and

10. An enrollee's right to obtain a second opinion and information on obtaining a second opinion; and

(d) Meet the information requirements established in Section 11 of this administrative regulation.

(3) Changes to the member handbook shall be approved by the department prior to the publication of the handbook.

Section 9. Member Education and Outreach. (1) An MCO shall:

(a) Have an enrollee and community education and outreach program throughout the MCO's service area;

(b) Submit an annual outreach plan to the department for approval;

(c) Assess the homeless population within its service area by implementing and maintaining an outreach plan for homeless individuals, including victims of domestic violence; and

(d) Not differentiate between a service provided to an enrollee who is homeless and an enrollee who is not homeless.

(2) An MCO's outreach plan shall include:

(a) Utilizing existing community resources including shelters and clinics; and

(b) Face-to-face encounters].

Section 8[40]. Enrollee Non-Liability and Liability for Payment.

(1)(a) Except as specified in Section 9 of this administrative regulation[907 KAR 17:030], an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:

1.[907 KAR 17:025, Section 2(4)(b)2g;

2.] 42 C.F.R. 431.230; or

2.[3.] 42 C.F.R. 438.404.

(2)[(a)] An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

Section 9. Recoupment of Payment from an Enrollee for Fraud, Waste, or Abuse. (1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud

by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee referenced in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund referenced in subsection (2) of this section within six (6) months, the commonwealth shall have the right to recover the refund from the enrollee.

Section 10. Third Party Liability and Coordination of Benefits.

(1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

(a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;

(b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;

(c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and

(d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.

(3) In accordance with 907 KAR 20:005 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, to the MCO the enrollee's rights to a medical support or payment from a third party for a medical service paid for by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that may be liable for care or services.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

Section 11.[(b) An MCO operating in Region 3 shall not impose cost sharing on an enrollee enrolled with the MCO in Region 3 prior to January 1, 2014.

Section 11. Provision of Information Requirements. (1) An MCO shall:

(a) Comply with the requirements established in 42 U.S.C. 1396u-2(a)(5) and 42 C.F.R. 438.10; and

(b) Provide translation services to an enrollee on site or via telephone.

(2) Written material provided by an MCO to an enrollee or potential enrollee shall:

(a) Be written at a sixth grade reading comprehension level;

(b) Be published in at least a fourteen (14) point font;

(c) Comply with the requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act;

(d) Be updated as necessary to maintain accuracy;

(e) Be available in Braille or in an audio format for an individual who is partially blind or blind; and

(f) Be provided and printed in each language spoken by five (5) percent or more of the enrollees in each county.

(3)(a) All written material intended for an enrollee, unless unique to an individual enrollee or exempted by the department, shall be submitted to the department for review and approval prior to publication or distribution to the enrollee.

(b) Written material submitted to the department for review by an MCO shall be considered approved by the department if the department does not object or notify an MCO within:

1. Thirty (30) days regarding a standard submission; or

2. Five (5) days regarding an expedited submission.

(c)1. Written material submitted to the department for review and approval shall be considered received for review beginning with the date that the commissioner or a deputy commissioner of the department acknowledges, to the MCO, receipt of the submission.

2. The acknowledgement referenced in subparagraph 1 of this paragraph shall be demonstrated by evidence of:

a. A return receipt if sent via U.S. Mail;

b. A read receipt if sent via e-mail; or

e. The signature of a Cabinet for Health and Family Services employee taking receipt of the submission in the case of hand-delivery, including overnight mail or courier delivery.

Section 12. Confidentiality of Medical Information. (1) An MCO shall:

(a) Maintain confidentiality of all enrollee eligibility information and medical records;

(b) Prevent unauthorized disclosure of the information referenced in this subsection in accordance with KRS 194A.060, KRS 214.185, KRS 434.840 to 434.860, and 42 C.F.R. 431 Subpart F, 431.300 to 431.307;

(c) Have written policies and procedures for maintaining the confidentiality of enrollee records;

(d) Comply with 42 U.S.C. 1320d-2, the Health Insurance Portability and Accountability Act, and 45 C.F.R. Parts 160 and 164;

(e) On behalf of its employees and agents:

1. Sign a confidentiality agreement attesting that it will comply with the confidentiality requirements established in this section; and

2. Submit the confidentiality agreement referenced in subparagraph 1. of this paragraph to the department;

(f) Limit access to medical information to a person or agency which requires the information in order to perform a duty related to the department's administration of the Medicaid program, including the department, the United States Department of Health and Human Services, the United States Attorney General, the CHFS OIG, the Kentucky Attorney General, or other agency required by the department; and

(g) Submit a request for disclosure of information referenced in this subsection which has been received by the MCO to the department within twenty-four (24) hours.

(2) Information referenced in subsection (1)(g) of this section shall not be disclosed by an MCO pursuant to the request without prior written authorization from the department.

Section 13. Americans with Disabilities Act and Cabinet Ombudsman. (1) An MCO shall:

(a) Require by contract with its network providers and subcontractors that a service location meets:

1. The requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act; and

2. All local requirements which apply to health facilities pertaining to adequate space, supplies, sanitation, and fire and safety procedures;

(b) Fully cooperate with the Cabinet for Health and Family Services independent ombudsman; and

(c) Provide immediate access to the Cabinet for Health and Family Services independent ombudsman to an enrollee's records if the enrollee has given consent.

(2) An MCO's member handbook shall contain information regarding the Cabinet for Health and Family Services independent ombudsman program.

Section 14. Marketing. (1) An MCO shall:

(a) Comply with the requirements established in 42 C.F.R. 438.104 regarding marketing activities;

(b) Have a system of control over the content, form, and method of dissemination of its marketing and information materials;

(c) Submit a marketing plan and marketing materials to the department for written approval prior to implementation or distribution;

(d) If conducting mass media marketing, direct the marketing activities to enrollees in the entire service area pursuant to the marketing plan;

(e) Not conduct face-to-face marketing;

(f) Not use fraudulent, misleading, or misrepresentative information in its marketing materials;

(g) Not offer material or financial gain to a:

1. Potential enrollee as an inducement to select a particular provider or use a product; or

2. Person for the purpose of soliciting, referring, or otherwise facilitating the enrollment of an enrollee;

(h) Not conduct:

1. Direct telephone marketing to enrollees or potential enrollees who do not reside in the MCO service area; or

2. Direct or indirect door-to-door, telephone, or other cold-call marketing activity; and

(i) Not include in its marketing materials an assertion or statement that the Centers for Medicare and Medicaid Services (CMS), the federal government, the Commonwealth, or another entity endorses the MCO.

(2) An MCO's marketing material shall meet the information requirements established in Section 11 of this administrative regulation.

Section 15.] Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order shall be authorized to act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of the child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 to 387.800 shall be allowed to act on behalf of an enrollee who is a ward of the commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 shall be allowed to act on behalf of an enrollee, potential enrollee, or former enrollee in making the health care decisions.

(c) An enrollee shall have the right to:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 12.[16. Enrollee Surveys. (1) An MCO shall:

(a) Conduct an annual survey of enrollee satisfaction of the quality and accessibility to a service provided by an MCO;

(b) Satisfy a member satisfaction survey requirement by participating in the Agency for Health Research and Quality's current Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) for Medicaid Adults and Children, which shall be administered by an NCQA-certified survey vendor;

(c) Provide a copy of the current CAHPS survey referenced in paragraph (b) of this subsection to the department;

(d) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;

(e) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and

(f) Provide to the department:

1. A copy of the results of the enrollee survey referenced in paragraph (a) of this subsection;

2. A description of a methodology to be used to conduct each survey;

3. The number and percentage of enrollees surveyed;

4. Enrollee survey response rates;

5. Enrollee survey findings; and

6. Interventions conducted or planned by the MCO related to activities in this section.

(2) The department shall:

(a) Approve enrollee survey instruments prior to implementation; and

(b) Approve or disapprove an MCO's enrollee survey tool within fifteen (15) days of receipt of the survey tool.

(3) If an MCO conducts a survey that targets a subpopulation's perspective or experience with access, treatment, or services, the MCO shall comply with the requirements established in subsection (1)(e) and (f) of this section.

Section 17.] Enrollees with Special Health Care Needs. (1)(a) In accordance with 42 C.F.R. 438.208, the following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or state-funded adoption assistance;
2. A homeless individual;
3. An individual with a chronic physical or behavioral illness;
4. A blind or disabled child;
5. An individual who is eligible for SSI benefits; or
6. An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2.

(b) In accordance with 42 C.F.R. 438.208, an MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;
2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;
3. Include the use of appropriate health care professionals to perform an assessment; and
4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(c)1. An enrollee who is a child in foster care~~or receiving adoption assistance~~ shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

2.a. The service plan referenced in subparagraph 1. of this paragraph shall be used by DCBS and the MCO to determine the enrollee's medical needs and to identify if there is a need for case management.

b. The MCO shall be available to meet with DCBS at least quarterly~~once a month~~ to discuss the health care needs of the child as identified in the service plan. The child's caretaker may attend each meeting held to discuss the health care needs of that child.

c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.

d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.

e. If the service plan accomplishes a requirement stated in paragraph (b) of this subsection, the requirement stated in paragraph~~subsection~~ (b) shall be considered to have been met.

(2) A treatment plan referenced in subsection (1)(b)4₂ of this section shall be developed:

(a) With participation from the enrollee or the enrollee's legal guardian as referenced in Section 11~~14~~ of this administrative regulation; and

(b) By the enrollee's primary care provider, if the enrollee has a primary care provider.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials referenced in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need; and

(c) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information referenced in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

(5)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

(b) If the service plan referenced in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a case management plan of care.

Section 13~~14~~. Second Opinion. An enrollee shall have the right to a second opinion within the MCO's provider network for a

surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 14~~19~~. Managed Care Requirements. (1) All aspects of managed care and the requirements of 907 KAR Chapter 17 shall be governed and controlled by the applicable federal and state laws, including 42 C.F.R. Part 438, 42 U.S.C. 1396n, and 42 U.S.C. 1396u-2, and the negotiated terms of the contract between a managed care organization and the department.

(2) The current MCO contracts shall be posted on the department's Web site at <http://chfs.ky.gov/dms/contracts.htm>.

Section 15. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 17:010 updates citations in the RELATES TO and STATUTORY AUTHORITY paragraphs and throughout the administrative regulation; clarifies that "days" means "calendar days"; deletes outdated provisions that applied during the department's initial implementation of managed care and other specified time periods that have already occurred; requires an MCO to issue an identification card to an enrollee; deletes the requirement that a disenrollment become effective on the first day of the month following disenrollment; deletes provisions that are already established in the negotiated contracts governed by KRS Chapter 45A; updates provisions to comply with 42 C.F.R. Part 438; specify that an adult for whom the state is appointed guardian shall not be required to have a primary care provider; authorizes a primary care provider to be a federally qualified health center look-alike; establishes provisions governing recoupment of payment from an enrollee for fraud, waste, or abuse, and third party liability and coordination of benefits (which were both moved from 907 KAR 17:030); requires the MCO to be available to meet with DCBS at least quarterly, rather than once a month, to discuss the health care needs of a child in foster care; and specifies that all aspects of managed care and the requirements of 907 KAR Chapter 17 shall be governed and controlled by the applicable federal and state laws and the negotiated terms of the contract between a managed care organization and the department. The current MCO contracts shall be posted on the department's Web site.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove provisions that are established in the negotiated contracts. Enforcement of the contractual provisions is governed by contracts law and KRS Chapter 45A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing provisions that repeated, summarized, or were otherwise covered by federal law and the negotiated terms of the contracts. Many provisions of 42 C.F.R. Part 438 require the managed care contracts to provide specified information, rather than state administrative regulations. See, for example, 42 C.F.R. 438.330(a)(1) and (3).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of updated (and corrected) cross-references. Additionally, this administrative regulation clarifies that all aspects of managed care and the requirements of 907 KAR Chapter 17 shall be governed and controlled by the applicable federal and state laws, and the negotiated terms of the contract between a managed care

organization and the department. These amendments also bring the administrative regulation into compliance with federal law that requires that certain provisions governing managed care be specified in the negotiated contracts, not the state administrative regulations.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not 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 is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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 stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

(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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(Amendment)

907 KAR 17:015. Managed care organization requirements and policies relating to providers.

RELATES TO: KRS 194A.025(3), 205.593, 304.14-135, 304.17A-700-304.17A-730[205.646, 304.17A-270], 42 C.F.R. 431.52, Part 438, 447.45, 447.46[455], 42 U.S.C. 1396a(a)(37), 1396n(e), 1396u-2(b)(2)(A)(i)(7)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. Part 438, 42 U.S.C. 1396n(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to providers.

Section 1. Provider Network. (1) An MCO shall:

(a) Enroll providers of sufficient types, numbers, and specialties in its network to satisfy the:

4.] access and capacity requirements established in Section 2 of this administrative regulation; and

~~(b)[2. Quality requirements established in 907 KAR 17:025, Section 5;~~

~~(b) Attempt to enroll the following providers in its network:~~

~~1. A teaching hospital;~~

~~2. A rural health clinic;~~

~~3. The Kentucky Commission for Children with Special Health Care Needs;~~

~~4. A local health department; and~~

~~5. A community mental health center;~~

~~(c) Demonstrate to the department the extent to which the MCO has enrolled providers in its network who have traditionally provided services to Medicaid recipients;~~

~~(d) Have at least one (1) FQHC in a region where the MCO operates in accordance with 907 KAR 17:020, if there is an FQHC that is licensed to provide services in the region; and~~

~~(e) Exclude, terminate, or suspend from the MCO's network a provider or subcontractor who engages in an activity that results in suspension, termination, or exclusion from a Medicare or Medicaid program.~~

~~(2) The length of an exclusion, termination, or suspension referenced in subsection (1)(e) of this section shall equal the length of the exclusion, termination, or suspension imposed by a Medicare or Medicaid program.~~

~~(3) If an MCO is unable to enroll a provider specified in subsection (1)(b) or (c) of this section, the MCO shall submit to the department for approval, documentation which supports the MCO's conclusion that adequate services and service sites as required in Section 2 of this administrative regulation shall be provided without~~

~~enrolling the specified provider.~~

~~(4) If an MCO or the department determines that the MCO's provider network is inadequate to comply with the access standards established in Section 2 of this administrative regulation for ninety-five (95) percent of the MCO's enrollees, the MCO shall:~~

~~(a) Notify the department; and~~

~~(b) Submit a corrective action plan to the department.~~

~~[(5) A corrective action plan referenced in subsection (4)(b) of this section shall:~~

~~(a) Describe the deficiency in detail; and~~

~~(b) Identify a specific action to be taken by the MCO to correct the deficiency, including a time frame.]~~

Section 2. Provider Access Requirements. (1) The access standards requirements established in 42 C.F.R. Part 438[438.206 through 438.210] shall apply to an MCO.

(2) An MCO shall make available and accessible to an enrollee:

(a) Facilities, service locations, and personnel sufficient to provide covered services consistent with the requirements specified in this section;

(b) Specialists available for the subpopulations designated in 907 KAR 17:010, Section 12; and

(c) Sufficient pediatric specialists to meet the needs of enrollees who are less than twenty-one (21) years of age.

(3)(a) Emergency medical and behavioral health services shall be available and accessible twenty-four (24) hours a day, seven (7) days a week.

(b) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition, whether or not the facility is in the MCO network.

(4)[]; and

(e) Urgent care medical and behavioral health services shall be available and accessible within forty-eight (48) hours of request.

(5) Time and Distance Standards. [(3)] (a) An MCO's primary care provider delivery site shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from an enrollee's residence in a non-urban area.

(b) A hospital shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or

2. Sixty (60) miles or sixty (60) minutes of an enrollee's residence in a nonurban area.

(c) A behavioral or physical rehabilitation service, a dental service, a general vision service, a laboratory service, a radiological service, or a pharmacy service shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(d)1. A pharmacy delivery site, except for a mail order pharmacy, shall not be further than fifty (50) miles from an enrollee's residence.

2. Transport time or distance threshold shall not apply to a mail-order pharmacy except that the mail-order pharmacy shall:

a. Be physically located within the United States of America; and

b. Provide delivery to the enrollee's residence.

(6) An MCO's primary care provider shall not have an enrollee to primary care provider ratio greater than 1,500:1.

(7) Appointment Wait Times. (a) Except as provided by subsection (3) or (4) of this section or paragraph (b) of this subsection, [(e)] an appointment wait time for a primary care provider, behavioral health provider, specialist, or dental, general vision, laboratory, or radiological service [at an MCO's primary care delivery site] shall not exceed:

4.] thirty (30) calendar days from the date of an enrollee's request for a routine or preventive service.

(b)[]; or

2. Forty-eight (48) hours from an enrollee's request for urgent care.

(4)(a) An appointment wait time for a specialist, except for a specialist providing a behavioral health service as provided in paragraph (b) of this subsection, shall not exceed:

1. Thirty (30) days from the referral for routine care; or

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

2. Forty-eight (48) hours from the referral for urgent care.

(b)1. A behavioral health service requiring crisis stabilization shall be provided within twenty-four (24) hours of the referral.

2. Behavioral health urgent care shall be provided within forty-eight (48) hours of the referral.

3. A behavioral health service appointment following a discharge from an acute psychiatric hospital shall occur within seven (7) calendar[~~fourteen~~ (14)] days of discharge. [4. A behavioral health service appointment not included in subparagraph 1, 2, or 3 of this paragraph shall occur within sixty (60) days of the referral.

(5) An MCO shall have:

(a) Specialists available for the subpopulations designated in 907 KAR 17:010, Section 17; and

(b) Sufficient pediatric specialists to meet the needs of enrollees who are less than twenty-one (21) years of age.

(6) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition; whether or not the facility is in the MCO network.

(7)(a) A hospital located in Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or

2. Sixty (60) minutes of an enrollee's residence in a non-urban area.

(b) A hospital located in Region 3 shall be within:

1. Thirty (30) miles or thirty (30) minutes of an enrollee's residence in an urban area; or

2. Sixty (60) miles or sixty (60) minutes of an enrollee's residence in a non-urban area.

(8) A behavioral or physical rehabilitation service in:

(a) Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

(b) Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(9)(a) A dental service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A dental appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

2. Forty-eight (48) hours for urgent care.

(10)(a) A general vision, laboratory, or radiological service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A general vision, laboratory, or radiological appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

2. Forty-eight (48) hours for urgent care.

(11)(a) A pharmacy service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A pharmacy delivery site, except for a mail-order pharmacy, shall not be further than fifty (50) miles from an enrollee's residence.

(c) Transport time or distance threshold shall not apply to a mail-order pharmacy except that it shall:

1. Be physically located within the United States of America; and

2. Provide delivery to the enrollee's residence.

(12)(a) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.

(b) In order to be covered, an emergency service shall be:

1. Medically necessary;

2. Authorized after being provided if the service was not prior

authorized; and

3. Covered in accordance with 907 KAR 17:020.]

Section 3. MCO Provider Enrollment. (1) A provider enrolled with an MCO shall:

(a) Be credentialed by the MCO in accordance with 42 C.F.R. Part 438[the standards established in Section 4 of this administrative regulation]; and

(b) Be enrolled[eligible to enroll] with the Kentucky Medicaid Program in accordance with 907 KAR 1:672.

(2) An MCO shall:

(a)[Not enroll a provider in its network if:

1. The provider has an active sanction imposed by the Centers for Medicare and Medicaid Services or a state Medicaid agency;

2. A required provider license or a certification is not current;

3. Based on information or records available to the MCO:

a. The provider owes money to the Kentucky Medicaid program; or

b. The Kentucky Office of the Attorney General has an active fraud investigation of the provider; or

4. The provider is not credentialed;

(b)] Have and maintain documentation regarding a provider's qualifications; and

(b)[(c)] Make the documentation referenced in paragraph (a)[(b)] of this subsection available for review by the department.

(3)[(a)] A provider shall not be required to participate in Kentucky Medicaid fee-for-service to enroll with an MCO.

Section 4. Prompt Payment of Claims. (1) In accordance with 42 U.S.C. 1396a(a)(37), an MCO shall have prepayment and postpayment claims review procedures that ensure the proper and efficient payment of claims and management of the program.

(2) An MCO shall:

(a) Comply with the prompt payment provisions established in

1. 42 C.F.R. 447.45 and 447.46; and

2. KRS 205.593, KRS 304.14-135, and KRS 304.17A-700 to 304.17A-730; and

(b) Notify a requesting provider of a decision to:

1. Deny a claim; or

2. Authorize a service in an amount, duration, or scope that is less than requested.

(3) The payment provisions in this section shall apply to a payment to:

(a) A provider within the MCO network; and

(b) An out-of-network provider.

Section 5. (b) If a provider is not a participant in Kentucky Medicaid fee-for-service, the provider shall obtain a Medicaid provider number from the department in accordance with 907 KAR 1:672.

Section 4. Provider Credentialing and Recredentialing. (1) An MCO shall:

(a) Have policies and procedures that comply with 907 KAR 1:672; KRS 205.560; and 42 C.F.R. 455-Subpart E, 455.400 to 455.470, regarding the credentialing and recredentialing of a provider;

(b) Have a process for verifying a provider's credentials and malpractice insurance that shall include:

1. Written policies and procedures for credentialing and recredentialing of a provider;

2. A governing body, or a group or individual to whom the governing body has formally delegated the credentialing function; and

3. A review of the credentialing policies and procedures by the governing body or its delegate;

(c) Have a credentialing committee that makes recommendations regarding credentialing;

(d) If a provider requires a review by the credentialing committee, based on the MCO's quality criteria, notify the department of the facts and outcomes of the review;

(e) Have written policies and procedures for:

1. Excluding, terminating, or suspending a provider; and

2. Reporting a quality deficiency that results in an exclusion,

suspension, or termination of a provider;

(f) Document the MCO's monitoring of a provider;

(g) Verify a provider's qualifications through a primary source that includes:

1. A current valid license or certificate to practice in the Commonwealth of Kentucky;

2. A Drug Enforcement Administration certificate and number, if applicable;

3. If a provider is not board certified, proof of graduation from a medical school and completion of a residency program;

4. Proof of completion of an accredited nursing, dental, physician assistant, or vision program, if applicable;

5. If a provider states on an application that the provider is board certified in a specialty, a professional board certification;

6. A previous five (5) year work history;

7. A professional liability claims history;

8. If a provider requires access to a hospital to practice, proof that the provider has clinical privileges and is in good standing at the hospital designated by the provider as the primary admitting hospital;

9. Malpractice insurance;

10. Documentation, if applicable, of a:

a. Revocation, suspension, or probation of a state license or Drug Enforcement Agency certificate and number;

b. Curtailment or suspension of a medical staff privilege;

c. Sanction or penalty imposed by the United States Department of Health and Human Services or a state Medicaid agency; or

d. Censure by a state or county professional association; and

11. The most recent provider information available from the National Practitioner Data Bank;

(h) Obtain access to the National Practitioner Data Bank as part of the MCO's credentialing process;

(i) Have:

1. A process to recredential a provider at least once every three (3) years that shall be in accordance with subsection (3) of this section; and

2. Procedures for monitoring a provider sanction, a complaint, or a quality issue between a recredentialing cycle;

(j) Have or obtain National Committee for Quality Assurance (NCQA) accreditation for its Medicaid product line within four (4) years of the date an MCO begins participation, for an MCO that did not begin participating by June 27, 2013; and

(k) Continuously maintain NCQA accreditation for the MCO's Medicaid product line after obtaining the accreditation.

(2) If an MCO subcontracts a credentialing or recredentialing function, the MCO and the subcontractor shall have written policies and procedures for credentialing and recredentialing.

(3) A provider shall complete a credentialing application, in accordance with 907 KAR 1:672, that includes a statement by the provider regarding:

(a) The provider's ability to perform essential functions of a position, with or without accommodation;

(b) The provider's lack of current illegal drug use;

(c) The provider's history of a:

1. Loss of license or a felony conviction;

2. Loss or limitation of a privilege; or

3. Disciplinary action;

(d) A sanction, suspension, or termination by the United States Department of Health and Human Services or a state Medicaid agency;

(e) Clinical privileges and standing at a hospital designated as the primary admitting hospital of the provider;

(f) Malpractice insurance maintained by the provider; and

(g) The correctness and completeness of the application.

(4) The department shall be responsible for credentialing and recredentialing a hospital-based provider.

Section 5. Provider Services. (1) An MCO shall have a provider services function responsible for:

(a) Enrolling, credentialing, recredentialing, and evaluating a provider;

(b) Assisting a provider with an inquiry regarding enrollee status, prior authorization, referral, claim submission, or payment;

(c) Informing a provider of the provider's rights and

responsibilities;

(d) Handling, recording, and tracking a provider grievance and appeal;

(e) Developing, distributing, and maintaining a provider manual;

(f) Provider orientation and training, including:

1. Medicaid covered services;

2. EPSDT coverage;

3. Medicaid policies and procedures;

4. MCO policies and procedures; and

5. Fraud, waste, and abuse;

(g) Assisting in coordinating care for a child or adult with a complex or chronic condition;

(h) Assisting a provider with enrolling in the Vaccines for Children Program in accordance with 907 KAR 1:680; and

(i) Providing technical support to a provider regarding the provision of a service.

(2) An MCO's provider services staff shall:

(a) Be available at a minimum Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Time; and

(b) Operate a provider call center.

Section 6. Provider Manual. (1) An MCO shall provide a provider manual to a provider within five (5) working days of enrollment with the MCO.

(2) Prior to distributing a provider manual or update to a provider manual, an MCO shall procure the department's approval of the provider manual or provider manual update.

(3) The provider manual shall be available in hard copy and on the MCO's Web site.

Section 7. Provider Orientation and Education. An MCO shall:

(1) Conduct an initial orientation for a provider within thirty (30) days of enrollment with the MCO to include:

(a) Medicaid coverage policies and procedures;

(b) Reporting fraud and abuse;

(c) Medicaid eligibility groups;

(d) The standards for preventive health services;

(e) The special needs of enrollees;

(f) Advance medical directives;

(g) EPSDT services;

(h) Claims submission;

(i) Care management or disease management programs available to enrollees;

(j) Cultural sensitivity;

(k) The needs of enrollees with mental, developmental, or physical disabilities;

(l) The reporting of communicable diseases;

(m) The MCO's QAPI program as referenced in 907 KAR 17:025, Section 5;

(n) Medical records;

(o) The external quality review organization; and

(p) The rights and responsibilities of enrollees and providers; and

(2) Ensure that a provider:

(a) Is informed of an update on a federal, state, or contractual requirement;

(b) Receives education on a finding from the provider's QAPI program if deemed necessary by the MCO or department; and

(c) Makes available to the department training attendance rosters that shall be dated and signed by the attendees.

Section 8.] Primary Care Provider Responsibilities. (1) A PCP shall:

(a) Maintain:

1. Continuity of an enrollee's health care;

2. A current medical record for an enrollee [in accordance with Section 12 of this administrative regulation]; and

3. Formalized relationships with other PCPs to refer enrollees for after-hours care, during certain days, for certain services, or other reasons to extend the hours of service of the PCP's practice;

(b) Refer an enrollee for specialty care or other medically necessary services:

1. Within the MCO's network; or

2. If the services are not available within the MCO's network, outside the MCO's network;
(c) Discuss advance medical directives with an enrollee;
(d) Provide primary and preventive care, including EPSDT services;

(e) Refer an enrollee for a behavioral health service if clinically indicated; and
(f) Have an after-hours phone arrangement that ensures that a PCP or a designated medical practitioner returns the call within thirty (30) minutes.

(2) An MCO shall monitor a PCP to ensure compliance with the requirements established in this section.

Section 6.[9. Provider Discrimination. An MCO shall:

(1) ~~Comply with the anti-discrimination requirements established in:~~

~~(a) 42 U.S.C. 1396u-2(b)(7);~~

~~(b) 42 C.F.R. 438.12; and~~

~~(c) KRS 304.17A-270; and~~

~~(2) Provide written notice to a provider denied participation in the MCO's network stating the reason for the denial.~~

Section 10.] Release for Ethical Reasons. An MCO shall:

(1) Not require a provider to perform a treatment or procedure that is contrary to the provider's conscience, religious beliefs, or ethical principles in accordance with 42 C.F.R. 438.102;

(2) Not prohibit or restrict a provider from advising an enrollee about health status, medical care, or a treatment:

(a) Whether or not coverage is provided by the MCO; and

(b) If the provider is acting within the lawful scope of practice; and

(3) Have a referral process in place if a provider declines to perform a service because of an ethical reason.

Section 7.[11. Provider Grievances and Appeals. (1) An MCO shall have written policies and procedures for the filing of a provider grievance or appeal:

~~(2) A provider shall have the right to file:~~

~~(a) A grievance with an MCO; or~~

~~(b) An appeal with an MCO regarding:~~

~~1. A provider payment issue; or~~

~~2. A contractual issue.~~

~~(3)(a) Except as established in paragraph (b) or (c) of this subsection, a provider grievance or appeal shall be resolved within thirty (30) calendar days.~~

~~(b)1. If a grievance or appeal is not resolved within thirty (30) days, an MCO shall request a fourteen (14) day extension from the provider.~~

~~2. The provider shall approve the extension request from the MCO.~~

~~(c) If a provider requests an extension, the MCO shall approve the extension.~~

~~(4) In accordance with KRS 205.646, a provider who has exhausted an MCO's internal grievance or appeal process may request an external independent third-party review pursuant to 907 KAR 17:035 on any final decision that denies in whole or in part a health care service to an enrollee or a claim for reimbursement.~~

Section 12. Medical Records. (1) An MCO shall:

(a) Require a provider to maintain an enrollee medical record on paper or in an electronic format; and

(b) Have a process to systematically review provider medical records to ensure compliance with the medical records standards established in this section.

(2) An enrollee medical record shall:

(a) Be legible, current, detailed, organized, and signed by the service provider;

(b)1. Be kept for at least five (5) years from the date of service unless a federal statute or regulation requires a longer retention period; and

2. If a federal statute or regulation requires a retention period longer than five (5) years, be kept for at least as long as the federally required retention period;

(c) Include the following minimal detail for an individual clinical

encounter:

1. The history and physical examination for the presenting complaint;

2. A psychological or social factor affecting the patient's physical or behavioral health;

3. An unresolved problem, referral, or result from a diagnostic test; and

4. The plan of treatment including:

a. Medication history, medications prescribed, including the strength, amount, and directions for use and refills;

b. Therapy or other prescribed regimen; and

c. Follow-up plans, including consultation, referrals, and return appointment.

(3) A medical chart organization and documentation shall, at a minimum, contain the:

(a) Enrollee identification information on each page;

(b) Enrollee date of birth, age, gender, marital status, race or ethnicity, mailing address, home and work addresses, and telephone numbers (if applicable), employer (if applicable), school (if applicable), name and telephone number of an emergency contact, consent form, language spoken, and guardianship information (if applicable);

(c) Date of data entry and of the encounter;

(d) Provider's name;

(e) Known allergies or adverse reactions of the enrollee;

(f) Enrollee's past medical history;

(g) Identification of any current problem;

(h) Ordering provider's initials or other documentation indicating review, if a consultation, laboratory, or radiology report is filed in the medical record;

(i) Documentation of immunizations;

(j) Identification and history of nicotine, alcohol use, or substance abuse;

(k) Documentation of notification of reportable diseases and conditions to the local health department serving the jurisdiction in which the enrollee resides or to the Department for Public Health pursuant to 902 KAR 2:020;

(l) Follow-up visits provided secondary to reports of emergency room care;

(m) Hospital discharge summaries;

(n) Advance medical directives for adults; and

(o) All written denials of service and the reason for each denial.

Section 13. Provider Surveys. (1) An MCO shall:

(a) Conduct an annual survey of provider satisfaction of the quality and accessibility to a service provided by an MCO;

(b) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;

(c) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and

(d) Provide to the department:

1. A copy of the results of the provider survey referenced in paragraph (a) of this subsection;

2. A description of a methodology to be used to conduct surveys;

3. The number and percentage of providers surveyed;

4. Provider survey response rates;

5. Provider survey findings; and

6. Interventions conducted or planned by the MCO related to activities in this section.

(2) The department shall:

(a) Approve provider survey instruments prior to implementation; and

(b) Approve or disapprove an MCO's provider survey tool within fifteen (15) days of receipt of the survey tool.

Section 14. Cost Reporting Information. The department shall provide to the MCO the calculation of Medicaid allowable costs as used in the Medicaid Program.

Section 15.] Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

for Medicare and Medicaid Services:

- (1) Denies or does not provide federal financial participation for the policy; or
- (2) Disapproves the policy.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care organization requirements and policies relating to providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization requirements and policies relating providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 17:015 updates citations in the RELATES TO paragraph and throughout the administrative regulation; clarifies that "days" means "calendar days"; deletes provisions that are already established in the negotiated contracts governed by KRS Chapter 45A or that are specified in federal law; amends Section 2 to reorganize that section for clarity, to reduce duplication, and to match provisions established in federal law or the negotiated contracts relating to provider access; and establishes prompt payment of claims provisions (which were moved from 907 KAR 17:030).

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove provisions that are established in the negotiated contracts. Enforcement of the contractual provisions is governed by contracts law and KRS Chapter 45A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing provisions that repeated, summarized, or were otherwise covered by federal law and the negotiated terms of the contracts. Many provisions of 42 C.F.R. Part 438 require the managed care contracts to provide specified information, rather than state administrative regulations. See, for example, 42 C.F.R. 438.330(a)(1) and (3).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of updated (and corrected) cross-references. These amendments also bring the administrative regulation into compliance with federal law that requires that certain provisions governing managed care be specified in the negotiated contracts, not the state administrative regulations.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not 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 is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to providers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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 stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

(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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services (Amendment)

907 KAR 17:020. Managed care organization service and service coverage requirements and policies.

RELATES TO: KRS 194A.025(3), Chapters 202A, 645, 42 U.S.C. 1396n(c), 42 C.F.R. 422.113(c), 431.51(a)(4), 431.52, Part 438, 447.500-447.522, 42 U.S.C. 1396b(m)(2)(A)(xiii), 1396d(r), 1396u-2(b)(2)(A)(i), (ii).

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42

U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the Medicaid managed care organization service and service coverage requirements and policies.

~~Section 1.[MCO Service Areas. An MCO's service areas shall be as established in the MCO Service Areas.~~

~~Section 2.] Covered Services.~~ (1) Except as established in subsection (2) of this section, an MCO shall be responsible for the provision of a covered health service:

(a) ~~That~~Which is established in Title 907 of the Kentucky Administrative Regulations;

(b) ~~That~~Which shall be in the amount, duration, and scope that the services are covered for recipients pursuant to the department's administrative regulations located in Title 907 of the Kentucky Administrative Regulations; and

(c) Beginning on the date of enrollment of a recipient into the MCO.

(2) Other than a nursing facility cost referenced in subsection (3)(i) of this section, an MCO shall be responsible for the cost of a non-nursing facility covered service provided to an enrollee during the first thirty (30) days of a nursing facility admission in accordance with this administrative regulation.

(3) An MCO shall not be responsible for the provision or costs of the following:

(a) A service provided to a recipient in an intermediate care facility for individuals with an intellectual disability;

(b) A service provided to a recipient in a 1915(c) home and community based waiver program;

(c) A hospice service provided to a recipient in an institution;

(d) A nonemergency medical transportation service provided in accordance with 907 KAR 3:066;

(e) Except as established in Section 5[6] of this administration regulation, a school-based health service;

(f) A service not covered by the Kentucky Medicaid Program;

(g) A health access nurturing development service pursuant to 907 KAR 3:140;

(h) An early intervention program service pursuant to 907 KAR 1:720; or

(i) A nursing facility service for an enrollee during the first thirty (30) days of a nursing facility admission.

(4) The following covered services provided by an MCO shall be accessible to an enrollee without a referral from the enrollee's primary care provider:

(a) A primary care vision service;

(b) A primary dental or oral surgery service;

(c) An evaluation by an orthodontist or a prosthodontist;

(d) A service provided by a women's health specialist;

(e) A family planning service;

(f) An emergency service;

(g) Maternity care for an enrollee under age eighteen (18);

(h) An immunization for an enrollee under twenty-one (21);

(i) A screening, evaluation, or treatment service for a sexually transmitted disease or tuberculosis;

(j) Testing for HIV, HIV-related condition, or other communicable disease; and

(k) A chiropractic service.

(5) An MCO shall:

(a) Not require the use of a network provider for a family planning service;

(b) In accordance with 42 C.F.R. 431.51(a)(4)(b), reimburse for a family planning service provided within or outside of the MCO's provider network;

(c) Cover an emergency service:

1. In accordance with 42 U.S.C. 1396u-2(b)(2)(A)(i);

2. Provided within or outside of the MCO's provider network; and~~or~~

3. If provided out-of-state, in accordance with 42 C.F.R. 431.52;

(d) Comply with 42 U.S.C. 1396u-2(b)(2)(A)(ii); and

(e) Be responsible for the provision and reimbursement of a covered service as described in this section beginning on or after the beginning date of enrollment of a recipient with an MCO as established in 907 KAR 17:010.

(6)(a) If an enrollee is receiving a medically necessary covered service the day before enrollment with an MCO, the MCO shall be responsible for the reimbursement of continuation of the medically necessary covered service without prior approval and without regard to whether services are provided within or outside the MCO's network until the MCO can reasonably transfer the enrollee to a network provider.

(b) An MCO shall comply with paragraph (a) of this subsection without impeding service delivery or jeopardizing the enrollee's health.

(7) To determine if a service is medically necessary and clinically appropriate, the MCO shall:

(a) Comply with 907 KAR 3:130; and

(b) Make utilization decisions using Interqual, unless otherwise negotiated in the MCO contract.

Section 2[3]. Early and Periodic Screening, ~~Diagnosis~~[Diagnostic], and Treatment (EPSDT) Services. (1) An MCO shall provide an enrollee under the age of twenty-one (21) years with EPSDT services in compliance with:

(a) 907 KAR 11:034; and

(b) 42 U.S.C. 1396d(r).

(2) A provider of an EPSDT service shall meet the requirements established in 907 KAR 11:034.

Section 3[4]. Emergency Care, Urgent Care, and Post-stabilization Care. (1) An MCO shall provide to an enrollee:

(a) Emergency care twenty-four (24) hours a day, seven (7) days a week; and

(b) Urgent care within forty-eight (48) hours.

(2) Post-stabilization services shall be provided and reimbursed in accordance with 42 C.F.R. 422.113(c) and 438.114(e).

(3) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.

(b) In order to be covered, an emergency service shall be:

1. Medically necessary;

2. Authorized after being provided if the service was not prior authorized; and

3. Covered in accordance with Section 1(5)(c) of this administrative regulation.

Section 4[5]. Maternity Care. An MCO shall:

(1) Have procedures to assure:

(a) Prompt initiation of prenatal care; or

(b) Continuation of prenatal care without interruption for a woman who is pregnant at the time of enrollment;

(2) Provide maternity care that includes:

(a) Prenatal;

(b) Delivery;

(c) Postpartum care; and

(d) Care for a condition that complicates a pregnancy; and

(3) Perform all the newborn screenings referenced in 902 KAR 4:030.

Section 5[6]. Pediatric Interface. (1) An MCO shall:

(a) Have procedures to coordinate care for a child receiving a school-based health service or an early intervention service; and

(b) Monitor the continuity and coordination of care for the child receiving a service referenced in paragraph (a) of this subsection as part of its quality assessment and performance improvement (QAPI) program[established in 907 KAR 17:025].

(2) Except when a child's course of treatment is interrupted by a school break, after-school hours, or summer break, an MCO shall not be responsible for a service referenced in subsection (1)(a) of this section.

(3) A school-based health service provided by a school district shall not be covered by an MCO.

(4) A school-based health service provided by a local health department shall be covered by an MCO.

Section 6.[7]. Pediatric Sexual Abuse Examination. (1) An MCO shall enroll at least one (1) provider in its network who has the capacity to perform a forensic pediatric sexual abuse examination.

~~(2) A forensic pediatric sexual abuse examination shall be~~

~~conducted for an enrollee at the request of the DCBS.~~

Section 8.] Lock-in Program. (1) An MCO shall have a program to control utilization of:

(a) Drugs and other pharmacy benefits; and

(b) Non-emergency care provided in an emergency setting.

(2)(a) The program referenced in subsection (1) of this section shall be approved by the department.

(b) An MCO shall not be required to use the criteria established in 907 KAR 1:677 for placing an enrollee in the MCO's lock-in program if:

1. The MCO provides notice to the enrollee, in accordance with the adverse action notice requirements established in 907 KAR 17:010, of being placed in the MCO's lock-in program; and

2. The enrollee is granted the opportunity to appeal being placed in a lock-in program in accordance with the:

a. MCO internal appeal process requirements established in 907 KAR 17:010; and

b. The department's state fair hearing requirements established in 907 KAR 17:010.

Section 7[9]. Pharmacy Benefit Program. (1) The pharmacy benefit program shall be in compliance with the applicable federal and state law, including 42 U.S.C. 1396b(m)(2)(A)(xiii), and 42 C.F.R. 447.500 through 447.522, and the negotiated terms of the contract between the MCO and the department.

~~(2)[An MCO shall:~~

~~(a) Have a pharmacy benefit program that shall have:~~

~~1. A point-of-sale claims processing service;~~

~~2. Prospective drug utilization review;~~

~~3. An accounts receivable process;~~

~~4. Retrospective utilization review services;~~

~~5. Formulary and non-formulary drugs;~~

~~6. A prior authorization process for drugs;~~

~~7. Pharmacy provider relations;~~

~~8. A toll-free call center that shall respond to a pharmacy or a physician prescriber twenty-four (24) hours a day, seven (7) days a week; and~~

~~9. A seamless interface with the department's management information system;~~

~~(b) Maintain a preferred drug list (PDL);~~

~~(c) Provide the following to an enrollee or a provider:~~

~~1. PDL information; and~~

~~2. Pharmacy cost sharing information; and~~

~~(d) Have a Pharmacy and Therapeutics Committee (P&T Committee), which shall:~~

~~1. Meet periodically throughout the calendar year as necessary; and~~

~~2. Make recommendations to the MCO for changes to the drug formulary.~~

~~(2)(a) The department shall comply with the drug rebate collection requirement established in 42 U.S.C. 1396b(m)(2)(A)(xiii).~~

~~(b) An MCO shall:~~

~~1. Cooperate with the department in complying with 42 U.S.C. 1396b(m)(2)(A)(xiii);~~

~~2. Assist the department in resolving a drug rebate dispute with a manufacturer; and~~

~~3. Be responsible for drug rebate administration in a non-pharmacy setting.~~

~~(3) An MCO's P&T committee shall meet and make recommendations to the MCO for changes to the drug formulary.~~

~~(4) If a prescription for an enrollee is for a non-preferred drug and the pharmacist cannot reach the enrollee's primary care provider or the MCO for approval and the pharmacist determines it necessary to provide the prescribed drug, the pharmacist shall:~~

~~(a) Provide a seventy-two (72) hour supply of the prescribed drug; or~~

~~(b) Provide less than a seventy-two (72) hour supply of the prescribed drug, if the request is for less than a seventy-two (72) hour supply.~~

~~(3)[(5)] Cost sharing imposed by an MCO shall not exceed the cost sharing limits established in 907 KAR 1:604.~~

Section 8.[10. MCO Interface with the Department Regarding Behavioral Health. An MCO shall:

- (1) Meet with the department monthly to discuss:
 - (a) Serious mental illness and serious emotional disturbance operating definitions;
 - (b) Priority populations;
 - (c) Targeted case management and peer support provider certification training and processes;
 - (d) IMPACT Plus program operations;
 - (e) Satisfaction survey requirements;
 - (f) Priority training topics;
 - (g) Behavioral health services hotline; or
 - (h) Behavioral health crisis services;
- (2) Coordinate:
 - (a) An IMPACT Plus covered service provided to an enrollee in accordance with 907 KAR 3:030;
 - (b) With the department:
 1. An enrollee education process for:
 - a. Individuals with a serious mental illness; and
 - b. Children or youth with a serious emotional disturbance; and
 2. On establishing a collaborative agreement with a:
 - a. State-operated or state-contracted psychiatric hospital; and
 - b. Facility that provides a service to an individual with a co-occurring behavioral health and developmental and intellectual disabilities; and
 - (c) With the department and community mental health centers a process for integrating a behavioral health service hotline; and
 - (3) Provide the department with proposed materials and protocols for the enrollee education referenced in subsection (2)(b) of this section.

Section 11.] Behavioral Health Services. (1) An MCO shall:

- (a) Provide a medically necessary behavioral health service to an enrollee in accordance with the access standards established in 907 KAR 17:015, Section 2;
- (b) Use the DSM-IV multi-axial classification system to assess an enrollee for a behavioral service;
- (c) Have an emergency or crisis behavioral health toll-free hotline staffed by trained personnel twenty-four (24) hours a day, seven (7) days a week;
- (d) Not operate one (1) hotline to handle both an emergency or crisis call and a routine enrollee call; and
- (e) Not impose a maximum call duration limit.
- (2) Staff of a hotline referenced in subsection (1)(c) of this section shall:
 - (a) Communicate in a culturally competent and linguistically accessible manner to an enrollee; and
 - (b) Include or have access to a qualified behavioral health professional to assess and triage a behavioral health emergency.
- (3) A face-to-face emergency service shall be available:
 - (a) Twenty-four (24) hours a day; and
 - (b) Seven (7) days a week.

Section 9.[12. Coordination Between a Behavioral Health Provider and a Primary Care Provider. (1) An MCO shall:

- (a) Require a PCP to have a screening and evaluation procedure for the detection and treatment of, or referral for, a known or suspected behavioral health problem or disorder;
- (b) Provide training to a PCP in its network on:
 1. Screening and evaluating a behavioral health disorder;
 2. The MCO's referral process for a behavioral health service;
 3. Coordination requirements for a behavioral health service; and
 4. Quality of care standards;
- (c) Have policies and procedures that shall be approved by the department regarding clinical coordination between a behavioral health service provider and a PCP;
- (d) Establish guidelines and procedures to ensure accessibility, availability, referral, and triage to physical and behavioral health care;
- (e) Facilitate the exchange of information among providers to reduce inappropriate or excessive use of psychopharmacological medications and adverse drug reactions;
- (f) Identify a method to evaluate continuity and coordination of

care; and

- (g) Include the monitoring and evaluation of the MCO's compliance with the requirements established in paragraphs (a) to (f) of this subsection in the MCO's quality improvement plan.
- (2) With consent from an enrollee or the enrollee's legal guardian, an MCO shall require a behavioral health service provider to:
 - (a) Refer an enrollee with a known or suspected and untreated physical health problem or disorder to their PCP for examination and treatment; and
 - (b) Send an initial and quarterly summary report of an enrollee's behavioral health status to the enrollee's PCP.

Section 13.] Court-Ordered Psychiatric Services. (1) An MCO shall:

- (a) Provide an inpatient psychiatric service to an enrollee under the age of twenty-one (21) or over the age of sixty-five (65) who has been ordered to receive the service by a court of competent jurisdiction under the provisions of KRS Chapters 202A or 645;
- (b) Not deny, reduce, or negate the medical necessity of an inpatient psychiatric service provided pursuant to a court-ordered commitment for an enrollee under the age of twenty-one (21) or over the age of sixty-five (65);
- (c) Coordinate with a provider of a behavioral health service the treatment objectives and projected length of stay for an enrollee committed by a court of law to a state psychiatric hospital; and
- (d) Enter into a collaborative agreement with the state-operated or state-contracted psychiatric hospital assigned to the enrollee's region in accordance with 908 KAR 3:040 and in accordance with the Olmstead decision.
- (2) An MCO shall present a modification or termination of a service referenced in subsection (1)(b) of this section to the court with jurisdiction over the matter for determination.
- (3)(a) An MCO behavioral health service provider shall:
 1. Participate in a quarterly continuity of care meeting with a state-operated or state-contracted psychiatric hospital;
 2. Assign a case manager prior to or on the date of discharge of an enrollee from a state-operated or state-contracted psychiatric hospital; and
 3. Provide case management services to an enrollee with a severe mental illness and co-occurring developmental disability who is discharged from a:
 - a. State-operated or state-contracted psychiatric hospital; or
 - b. State-operated nursing facility for individuals with severe mental illness.
- (b) A case manager and a behavioral health service provider shall participate in discharge planning to ensure compliance with the Olmstead decision.

Section 10[14]. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies or does not provide federal financial participation for the policy; or
- (2) Disapproves the policy. [Section 15. Incorporation by Reference. (1) "MCO Service Areas", November 2012 edition, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
- (3) It may also be obtained 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: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street,

Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care organization service and service coverage requirements and policies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization service and service coverage requirements and policies.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 17:020 updates citations in the RELATES TO paragraph and throughout the administrative regulation; deletes references to and the incorporation by reference of an outdated document that established service areas for MCOs; makes changes to comply with the drafting and formatting requirements of KRS Chapter 13A; adds provisions regarding the determination of medical necessity and clinical appropriateness; adds provisions regarding prior authorization and coverage of emergency services (which were moved from 907 KAR 17:015); deletes provisions that are already established in the negotiated contracts governed by KRS Chapter 45A; updates provisions to comply with 42 C.F.R. Part 438; and specifies that the pharmacy benefit program shall be in compliance with the applicable federal and state law and the negotiated terms of the contract between the MCO and department.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove provisions that are established in the negotiated contracts. Enforcement of the contractual provisions is governed by contracts law and KRS Chapter 45A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective

administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing provisions that repeated, summarized, or were otherwise covered by federal law and the negotiated terms of the contracts. Many provisions of 42 C.F.R. Part 438 require the managed care contracts to provide specified information, rather than state administrative regulations. See, for example, 42 C.F.R. 438.330(a)(1) and (3).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of updated (and corrected) cross-references. These amendments also bring the administrative regulation into compliance with federal law that requires that certain provisions governing managed care be specified in the negotiated contracts, not the state administrative regulations.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not 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 is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the Medicaid managed care organization service and service coverage requirements and policies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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 stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

(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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services (Amendment)

907 KAR 17:035. External independent third-party review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. Part 438
STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.646, 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.646 requires the department to promulgate administrative regulations to implement ~~the~~^{an} external independent third-party review ~~required by that statute of a managed care organization's internal appeal process~~. This administrative regulation establishes provisions regarding a Medicaid provider's right to an external independent third-party review of a managed care organization's adverse final decision of a provider's appeal of a denial of a claim for reimbursement or a service.

Section 1. Managed Care Organization Notice to Provider. (1) If an MCO issues an adverse final decision to a provider of a

denial, in whole or in part, of a health care service, or claim for reimbursement as referenced in KRS 205.646(2) for a date of service or request for service on or after December 1, 2016, the MCO shall notify the provider in writing of the provider's right to an external independent third-party review pursuant to KRS 205.646.

(2) The MCO's notice shall:

(a) Comply with the requirements established in KRS 205.646(3) regarding an external independent third-party review; and

(b) State the reason for the adverse decision.

Section 2. External Independent Third-Party Review Preliminary Requirements. (1)(a) To request an external independent third-party review afforded to a provider pursuant to KRS 205.646(2), a provider shall submit a written request for external independent third-party review to the MCO within sixty (60) calendar days of receiving the MCO's final decision resulting from the MCO's internal appeal process.

(b) The sixty (60) day count shall begin on the:

1. Date that the notice was received electronically, if received electronically;

2. Date that the notice was received via fax, per the date and time documented on the fax transmission, if the notice was faxed; or

3. Post mark date on the envelope containing the notice, if the notice was sent via postal mail. An additional three (3) days shall be added ~~if~~^{when} the service is by mail.

(c) A request for an external independent third-party review shall be sent to the MCO:

1. Electronically;

2. By fax; or

3. By postal mail.

(2) A provider's request for an external independent third-party review shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the MCO;

(b) State the basis on which the MCO's decision on each issue is believed to be erroneous;

(c) Limit disputes to the:

1. ~~Documentation~~^{information} the provider submitted for the ~~MCO's~~^{MCO} internal appeal ~~process~~; and

2. Any other information contained in the MCO's final decision; and

(d) State the provider's designated contact information, including name, phone number, mailing address, fax number, and email address.

(3) Within five (5) business days of receiving a provider's request for an external independent third-party review, the MCO shall:

(a) Confirm in writing to the provider's designated contact the MCO's receipt of the external independent third-party review request from the provider;

(b) Notify the department of the provider's request for an external independent third-party review; and

(c) Notify the enrollee of the provider's request for an external independent third-party review, if related to the denial of a health care service.

(4)(a) An external independent third-party review shall not be granted regarding a claim about which the enrollee has already requested an administrative hearing pursuant to 907 KAR 17:010, Section 5.

(b) If an enrollee files a request for an administrative hearing pursuant to 907 KAR 17:010, Section 5, regarding a claim about which a provider has already filed a request for an external independent third-party review, the external independent third-party review shall be held in abeyance until the enrollee's appeal has been fully adjudicated.

(5) Upon receiving a request for an external independent third-party review, the department shall:

(a) Assign the review to an external independent third-party reviewer; and

(b) Notify the:

1. MCO of the external independent third-party reviewer; and

2. Provider's designated contact of the external independent

third-party reviewer.

(6) The department shall deny a request to initiate the external independent third-party review process, or a part thereof, if a party fails to:

(a) Exhaust the MCO's internal appeal process~~[in accordance with 907 KAR 17:015]~~; or

(b) Submit a timely request for an external independent party review in accordance with subsection (1) of this section.

(7) Within fifteen (15) business days of a provider's request for an external independent third-party review, the MCO shall:

(a) Submit to the department a record on appeal, which shall consist of:

1. All documentation submitted by the provider in the MCO's internal review process; and

2. Any other information contained in the MCO's final decision;

(b) Designate a contact, including name, phone number, mailing address, fax number, and email address;

(c) Submit a copy of the provider's appeal request;

(d) Submit the MCO's final decision from its internal review process; and

(e) Include with the submission an attestation that the submitted documents required by paragraphs (a) through (d) of this subsection are accurate and complete.

Section 3. External Independent Third-Party Review. (1) The following shall be the categories of external independent third-party reviews:

(a) Medical necessity, which shall include~~[-]~~ a claim involving a medical necessity determination; or

(b) Service coverage requirements, which shall include~~[including]~~:

1. A claim involving whether the given service is covered by the Medicaid program; or

2. A claim involving whether the provider followed the MCO requirements for the covered service.

(2)(a) A claim involving a medical necessity determination shall be reviewed by a clinician or clinicians who:

1. Have clinical expertise regarding the subject matter; and

2. Are currently licensed regarding the subject matter.

(b) A claim involving service coverage requirements shall be reviewed by the department.

(3) Only one (1) claim shall be reviewed per external independent third-party review unless the department determines that reviewing multiple claims related to one (1) member is expedient and appropriate.

(4) The documentation to be reviewed by an external independent third-party reviewer shall be limited to the information specified~~[documentation referenced]~~ in Section 2(7) of this administrative regulation.

(5)(a) An external independent third-party reviewer shall:

1. Except as established in paragraph (c) of this subsection, conduct an external independent third-party review and issue a final decision within thirty (30) calendar days from the receipt of the documentation referenced in Section 2(7) of this administrative regulation; and

2. Issue the final decision to:

a. The provider's designated contact;

b. The MCO's designated contact; and

c. The department.

(b) Within ten (10) business days of receiving the final decision of the external independent third party reviewer, the MCO shall notify the enrollee of the final decision, if related to the denial of a health care service.

(c) An extension of up to fourteen (14) calendar days on a final decision of an external independent third-party review may be allowed upon agreement of both parties.

Section 4. Right to an Administrative Hearing. (1) Upon the issuance of a final decision by an external independent third-party reviewer, the department shall notify in writing the MCO and the provider's designated contact of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to 907 KAR 17:040.

(2)(a) A request for an administrative hearing~~[appeal]~~

referenced in subsection (1) of this section shall be received~~by~~~~[sent to]~~ the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an administrative hearing~~[appeal]~~ shall be sent to the department:

1. Electronically;

2. By fax; or

3. By postal mail.

Section 5. Within sixty (60) calendar days from the exhaustion of appeal rights after a final decision against an MCO, whether rendered in an administrative proceeding or a court of law, the MCO shall submit complete payment as required by the decision.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the external independent third-party review.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 205.646, 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. KRS 205.646 requires the department to promulgate administrative regulations to implement the external independent third-party review required by that statute.

(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 external independent third-party review, as required by KRS 205.646.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 17:035 updates citations in the RELATES TO paragraph and throughout the administrative

regulation; makes changes to comply with the drafting and formatting requirements of KRS Chapter 13A; specifies that the external independent third-party review is available for a date of service or request for service on or after December 1, 2016 (which was the effective date of the emergency administrative regulation promulgated at the same time as the existing ordinary administrative regulation being amended); amends the language and structure of Section 2(2)(c) to mirror the structure of Section 2(7) for clarity; and establishes a new Section 5 to require, within sixty (60) calendar days from the exhaustion of appeal rights after a final decision against an MCO, whether rendered in an administrative proceeding or a court of law, that the MCO submit complete payment as required by the decision.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to comply with the drafting and formatting requirements of KRS Chapter 13A and to make revisions to clarify the applicable dates of service or requests for service, and when payment is required after a final decision against an MCO has been issued.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. KRS 205.646 requires the department to promulgate administrative regulations to implement the external independent third-party review required by that statute.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by complying with the drafting and formatting requirements of KRS Chapter 13A and making revisions to clarify the applicable dates of service or requests for service, and when payment is required after a final decision against an MCO has been issued.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under the new Section 5, within sixty (60) calendar days from the exhaustion of appeal rights after a final decision against an MCO, the MCO is required to submit complete payment as required by the decision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The new requirement in Section 5 will not cost an MCO additional amounts, but rather it clarifies when that complete payment is due.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of knowing when complete payment is due following the exhaustion of appeal rights after a final decision against an MCO. Additionally, they will have the benefit of knowing what dates of service or requests for service are governed by the external independent third-party review.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to submit complete payment; the new Section 5 clarifies when that complete payment is due.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to submit complete payment; the new Section 5 clarifies when that complete payment is due.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not 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 is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.646

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the external independent third-party review.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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 stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.646, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

(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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(New Administrative Regulation)

16 KAR 1:016. 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

MARY GWEN WHEELER, Board Chair

APPROVED BY AGENCY: November 7, 2017

FILED WITH LRC: November 9, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 December 31, 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: Lauren Graves, Executive Staff Advisor, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email Lauren.Graves@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Cassie Trueblood, phone 502-564-4606, email Cassie.Trueblood@ky.gov, and Lauren Graves

(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 Medical Imaging and Radiation Therapy (New Administrative Regulation)

201 KAR 46:095. Administrative subpoena.

RELATES TO: KRS 311B.050(7), 311B.160, 311B.170

STATUTORY AUTHORITY: KRS 311B.050(1), (2), KRS 311B.050(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(1) and (2) require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce the chapter. KRS 311B.050(7) authorizes the board to investigate suspected and alleged violations of KRS Chapter 311B or 201 KAR Chapter 46. This administrative regulation establishes procedures for issuing an administrative subpoena, which is necessary to investigate and resolve suspected and alleged violations.

Section 1. The Board of Medical Imaging and Radiation Therapy may issue an administrative subpoena to investigate a complaint or suspected violation of KRS Chapter 311B or 201 KAR Chapter 46.

Section 2. Administrative Subpoenas. (1) The board shall issue a subpoena in accordance with KRS 335.515(2) to require the production of books, electronic records, papers, documents, or other evidence at a specified time and place.

(2) If information requested by the board is encrypted, the respondent shall:

(a) Provide the information in a readable format; and

(b) Provide proof acceptable to the board that the requested information has been translated to a readable format without error or omission.

(3) A person or entity served with a subpoena in accordance with subsection (1) of this section shall not intentionally destroy, alter, or falsify documents requested by the board.

Section 3. Noncompliance. (1) If a person fails without good cause to produce requested documents in accordance with Section 2(1) of this administrative regulation, the board may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 2(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. 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

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on December 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be used in relations to an administrative subpoena being issued by Kentucky Board of Medical Imaging and Radiation Therapy.

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedures for the administrative subpoena process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(7) authorizes the board to investigation suspected and alleged violations of KRS Chapter 311B or 201 KAR Chapter 46. This administrative regulation establishes procedures for issuing an administrative subpoena, which is necessary to investigate and resolve suspected and alleged violations.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will inform the public of the administrative subpoena procedures.

(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: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities and individuals will be required to require the produce books, papers, documents, or other evidence when commanded by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: The expense should be relatively minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities and individuals will be protected by disclosures to the board or entitled to due process in opposition to the subpoena.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending 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 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. 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? Board of Medical Imaging and Radiation Therapy.

(2) Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 311B.050(1), (2), KRS 311B.050(7).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Repealer)

804 KAR 4:241. Repeal of 804 KAR 4:240.

RELATES TO: KRS 241.060, 244.440

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. This administrative regulation repeals 804 KAR 4:240 because recent changes to 804 KAR 4:410 render the current administrative regulation duplicative. The form referenced in the current administrative regulation is no longer utilized because licensees now register products exclusively through the Online Product Registration Portal pursuant to 804 KAR 4:410.

Section 1. 804 KAR 4:240, Registration of brands, is hereby repealed.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 14, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017 at 11:00 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 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

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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 December 31, 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, 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.

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 repeals 804 KAR 4:240.

(b) The necessity of this administrative regulation: This administrative regulation repeals 804 KAR 4:240 because recent changes to 804 KAR 4:410 render the current administrative regulation duplicative. The form referenced in the current administrative regulation is no longer utilized, and licensees now register products exclusively through the Online Product Registration Portal in 804 KAR 4:410. This repealer will eliminate a separate and duplicative administrative regulation that is no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. Provisions in the administrative regulation being repealed have been consolidated into another existing administrative regulation on the same topic, and the form referenced in the current administrative regulation is no longer utilized.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will eliminate a separate and duplicative administrative regulation that is no longer needed. Recent changes to 804 KAR 4:410 created a new process for registering products. Licensees now register products exclusively through the Online Product Registration Portal in 804 KAR 4:410, and the form referenced in the current administrative regulation is no longer utilized.

(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 is impacted by the repeal of this administrative regulation. Current and prospective licensees will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Alcoholic Beverage Control will not be required to take any additional action to implement this repealer. Current and prospective licensees will be benefitted by elimination of a duplicative and outdated administrative regulation regarding the Department's brand registration requirement. Licensee conduct will not change as the brand registration requirement is already incorporated into another

administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to repeal this administrative regulation. Licensees of the Department will find it beneficial to refer to only one administrative regulation for brand registration.

(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 repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the repeal 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 repeal this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied because this administrative regulation repeals an earlier administrative regulation and applies equally to all 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 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.

(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 the repeal 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 by the repeal of this administrative regulation.

(c) How much will it cost to administer this program for the first year? No costs are expected for the first year with the repeal of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact is expected.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)**

804 KAR 6:011. Repeal of 804 KAR 6:010.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. This administrative regulation repeals 804 KAR 6:010 because, pursuant to KRS 13B.020, KRS Chapter 13B applies to all administrative hearings conducted by an agency, unless otherwise exempted. KRS 13B.020 does not exempt the board from the provisions of KRS Chapter 13B. Additionally, KRS 241.060 and KRS 243.550 require that hearings before the board shall be conducted in accordance with KRS Chapter 13B. 804 KAR 6:010 is therefore duplicative of statute and no longer needed.

Section 1. 804 KAR 6:010, Procedures, is hereby repealed.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 14, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017 at 11:30 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 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 December 31, 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, 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.

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 repeals 804 KAR 6:010.

(b) The necessity of this administrative regulation: KRS 13B.020 provides that KRS Chapter 13B shall govern all administrative hearings conducted by an agency unless the agency or the type of hearing is exempt. Additionally, KRS 241.060 and KRS 243.550 require that hearings before the Alcoholic Beverage Control Board shall be conducted in accordance with KRS Chapter 13B. KRS Chapter 13B therefore applies to all administrative hearings before the board as a matter of law so that the current administrative regulation is not needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. The provision in the administrative regulation being repealed is duplicative of statute and is therefore unnecessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will eliminate a duplicative and unnecessary administrative regulation.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: 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 is impacted by the repeal of this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Alcoholic Beverage Control will not be required to take any additional action to implement the repeal of this administrative regulation, and repeal will not change the conduct of the Department, as it is already statutorily required to follow KRS Chapter 13B.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to repeal this administrative regulation.

(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 repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the repeal 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 repeal this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied because this administrative regulation repeals an earlier administrative regulation and applies equally to all 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 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.

(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 the repeal of this administrative regulation.

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

(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 the repeal of this administrative regulation.

(c) How much will it cost to administer this program for the first year? No costs are expected for the first year with the repeal of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact is expected.

**PUBLIC PROTECTION CABINET
Department of Insurance
Commissioner's Office
(Repealer)**

806 KAR 18:011. Repeal of 806 KAR 18:010.

RELATES TO: KRS 304.18-130, 304.18-140, 304.18-150, 304.18-160, 304.18-170, 304.32-158, 304.38-197

STATUTORY AUTHORITY: KRS 304.2-110, KRS 304.18-180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 18:010, Minimum standards for treatment of alcoholism, which provides minimum treatment requirements for alcoholism within group health plans, and also defines provider and facility eligibility standards to perform such treatment. The administrative regulation is repealed for three primary reasons. First, it primarily restates the detailed statutory treatment mandates for group health policyholders. Second, the administrative regulation exceeds statutory authority and requires treatment levels beyond those established by statute. Lastly, the administrative regulation requires treatment facilities to be licensed with the department and accredited by the Joint Commission on the Accreditation of Hospitals, in direct conflict with statutory eligibility standards. KRS 304.18-130(2) requires only a "treatment facility licensed by the department or accredited by the Joint Commission." The repeal of this administrative regulation will not sacrifice benefits and may increase the number of facilities eligible to perform such treatment.

Section 1. 806 KAR 18:010, Minimum standards for treatment of alcoholism, is hereby repealed.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 13, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2017 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by December 14, 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 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 if received on or before 11:59 pm on December 31, 2017. Please send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 18:010.

(b) The necessity of this administrative regulation: As described in the body of the "repealer," this administrative regulation repeals a regulation in conflict with the governing statutes. The repeal will not sacrifice benefits required in group health policies by multiple statutes (KRS 304.18-130 through KRS 304.18-170) and in the Patient Protection and Affordable Care Act ("ACA"). It will remove a conflicting restriction on provider and facility eligibility standards, potentially increasing the number of eligible providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing a regulation in conflict with its governing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals one administrative regulation that is redundant and in conflict with statutory provisions. Thus, it will prevent confusion among regulated entities regarding their obligations to remain in compliance, and will allow more facilities to become eligible to perform this treatment.

(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 treatment considered by the regulation is codified and required in multiple statutes, and will not be sacrificed. Individuals may have greater access to treatment as more facilities become eligible under the statutory requirements. The number of individuals or entities impacted 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: Regulated entities will not be required to take any action as a result of this repealer regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional facilities may become eligible to perform alcoholism treatment increasing access for individuals.

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

(a) Initially: There will not be an initial cost to implement this

repealer regulation.

(b) On a continuing basis: There will not be a continuing cost related to this repealer regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.18-180, 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? The repealer will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The repealer will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate a cost due to the repeal of this regulation.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate a cost due to the repeal of these regulations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services (Repealer)

907 KAR 17:026. Repeal of 907 KAR 17:025 and 907 KAR 17:030.

RELATES TO: KRS 194A.025(3), 42 U.S.C. 1396n, 42 C.F.R. Part 438

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation repeals 907 KAR 17:025 and 907 KAR 17:030 because their provisions

repeat or summarize 42 U.S.C. 1396n, 42 C.F.R. Part 438, other administrative regulations within Title 907 KAR, or the negotiated contracts between managed care organizations and the department, which are governed by, and entered into, in accordance with KRS Chapter 45A.

Section 1. The following administrative regulations are hereby repealed:

(1) 907 KAR 17:025, Managed care organization requirements and policies related to utilization management and quality; and

(2) 907 KAR 17:030, Managed care organization operational and related requirements and policies.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 907 KAR 17:025 and 907 KAR 17:030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3) and KRS 13A.310.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. KRS 13A.310 requires an administrative body to repeal an administrative regulation if it is desired that the administrative regulation no longer be effective.

(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 repealing two (2) administrative regulations because their provisions repeat or summarize 42 U.S.C. 1396n, 42 C.F.R. Part 438, other administrative regulations within Title 907 KAR, or the negotiated contracts between managed care organizations and the department, which are governed by, and entered into, in accordance with KRS Chapter 45A.

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

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this administrative regulation as it is a repealer administrative regulation. The provisions in the repealed administrative regulations are covered by 42 U.S.C. 1396n, 42 C.F.R. Part 438, other administrative regulations within Title 907 KAR, and the negotiated contracts between managed care organizations and 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 are not any costs to complying with this repealer administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of having two (2) administrative regulations no longer in effect. Their repeal clarifies that the governing provisions are established in 42 U.S.C. 1396n, 42 C.F.R. Part 438, other administrative regulations within Title 907 KAR, and the negotiated contracts between managed care organizations and the department.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts. Additionally, there are not any costs for repealing existing administrative regulations.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts. Additionally, there are not any costs for repealing existing administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.050(1) and 205.520(3). Also KRS 13A.310.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation repeals two (2) existing administrative regulations as their provisions are already established in 42 U.S.C. 1396n, 42 C.F.R. Part 438, other administrative regulations within Title 907 KAR, and the negotiated contracts between managed care organizations and the department.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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 stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 U.S.C. 1396n(b), 42 C.F.R. Part 438. Also 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? 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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of November 13, 2017

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Monday, November 13, 2017, at 10:00 a.m. in Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the October 2017 meeting were approved.

Present were:

Members: Senators Perry Clark, Ernie Harris and Julie Raque Adams, and Representatives Mary Lou Marzian, Jason Petrie, and Ken Upchurch.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Emily Dennis, Registry of Election Finance; Sharron Burton, Personnel Cabinet; Rebecca Rogers Johnson, Ed Ross, Lisa Swiger, Department of Revenue; Scott Greenwell, Board of Pharmacy; Nathan Goldman, Board of Nursing; Jared Downs, Stacy Grider, Brian Judy, Martin Wesley, Board of Licensure for Occupational Therapy; Amber Arnett, Ron Brooks, Karen Waldrop, Department of Fish and Wildlife Resources; Joe Bilby, Jason Glass, Clint Quarles, Department of Agriculture; Rick Bender, Aaron Keatley, Joh Maybriar, Bruce Scott, Larry Taylor, Department of Environmental Protection; Jeffery Biard, Allen Luttrell, Department of Natural Resources; Mark Jordan, Steven Milby, David Moore, David Startzman, Department of Housing, Buildings and Construction; Mary Lewis, Brandon Smith, Eric Smith, Office of Health Policy; Steve Davis, Stephanie Hold, Jill Lee, Office of Inspector General; Laura Begin, Erica Brakefield, Ken Spach, Jennifer Wosling, Department of Public Health; Donna Little, Department of Medicaid; Michelle Anderson, Elizabeth Caywood, Steven Fisher, Gretchen Marshall; Department for Community Based Services; Dr. Trish Freeman, Cindy Stone, Leslie Kenney, Patty Swiney. Nancy Galvagini, Mary Haynes, Betsy Johnson, Bill Barr.

The Administrative Regulation Review Subcommittee met on Monday, November 13, 2017, and submits this report:

Administrative Regulations Reviewed by the subcommittee:

DEPARTMENT OF STATE: Registry of Election Finance: Reports and Forms

[32 KAR 1:020 & E](#). Statement of spending intent and appointment of campaign treasurer. Emily Dennis, general counsel, represented the registry.

A motion was made and seconded to approve the following amendments: to amend Section 3 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

[101 KAR 2:210 & E](#). 2018 Plan year handbook for the public employee health insurance program. Sharon Burton, deputy executive director and counsel, represented the cabinet.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration

[103 KAR 1:120](#). Employee access to federal tax information (FTI). Rebecca Johnson, disclosure and security officer; Ed Ross, state controller; and Lisa Swiger, tax policy research consultant, represented the department.

In response to questions by Co-Chair Harris, Ms. Johnson stated that employees subject to the background check were previously investigated only by a simple background check provided through the Administrative Office of the Courts. This amendment added a federally mandated fingerprint FBI background check.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Corporations

[103 KAR 16:391](#). Repeal of 103 KAR 16:390 and 103 KAR 16:020.

Income Tax; Individual

[103 KAR 17:151](#). Repeal of 103 KAR 17:150.

Sales and Use Tax; Service and Professional Occupations

[103 KAR 26:110](#). Motor carrier repair and replacement parts.

Sales and Use Tax; Miscellaneous Retail Transactions

[103 KAR 28:150](#). Collection of sales tax on certain motor vehicle sales.

Sales and Use Tax; Administration and Accounting

[103 KAR 31:050](#). Returned merchandise.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[103 KAR 31:180](#). Signature project refunds on construction costs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[103 KAR 31:190](#). Alternative fuel, gasification, and renewable energy facility refunds on construction costs.

[103 KAR 31:200](#). Energy efficiency projects.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Motor Vehicle Usage

[103 KAR 44:060](#). Motor vehicle usage tax valuation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and

Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[103 KAR 44:070](#). Taxation of loaner and rental motor vehicles.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

[103 KAR 44:100](#). Procedures for refund based on vehicle condition.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[103 KAR 44:120](#). Incorrect statement of origin or certificate of title.

Tax Increment Financing

[103 KAR 50:021](#). Repeal of 103 KAR 50:020, 103 KAR 50:030 and 103 KAR 50:040.

Office of the Controller

[200 KAR 38:021](#). Repeal of 200 KAR 38:020 and 201 KAR 38:030.

GENERAL GOVERNMENT CABINET: Board of Pharmacy

[201 KAR 2:380](#). Board authorized protocols. Scott Greenwell, president, represented the board. Dr. Trish Freeman, chair, Kentucky Pharmacists Association; Dr. Cindy Stowe, dean, Sullivan University College of Pharmacy; and Leslie Kenney, hospital pharmacist, Kentucky Society Health-system Pharmacists, appeared in support of this administrative regulation. Dr. Patty Swiney, Kentucky Academy of Family Physicians, appeared in opposition to this administrative regulation.

In response to questions by Senator Raque Adams, Mr. Greenwell stated that KRS 315.010, revised during the 2016 Regular Session of the General Assembly, updated the definition of "prescription drug order" to include prescriber-driven protocols. This administrative regulation was promulgated in response to that statutory revision to establish board procedures for the authorization of prescriber-driven protocols by which pharmacists dispensed medications or other professional services. Past examples of prescriber-driven protocols performed by pharmacists included administration of vaccinations for immunization and naloxone for opioid overdose. Controlled substances were excluded from this administrative regulation. While vaccinations for immunization and naloxone for opioid overdose were specifically established by the board's statutory authority, KRS 315.010 was revised to include general prescriber-driven protocols; therefore, it was unnecessary to have each specific type of protocol directly established by statute. Dr. Swiney stated that the Kentucky Academy of Family Physicians (KAFP) was made aware of the development of this administrative regulation and attempted to work with the board to resolve concerns. After public comments, the board amended the administrative regulation in response to a comment the KAFP made regarding the need to exclude controlled substances from the possible protocols, but the board did not address KAFP's other concerns.

In response to questions by Senator Clark, Mr. Greenwell stated that the vaccinations for immunization currently being dispensed by pharmacists were based on prescriber-driven protocols, typically based on a general standing order from a prescriber.

Dr. Freeman stated that Kentucky Pharmacists Association, which represented over 1,800 pharmacy professionals throughout the Commonwealth, enthusiastically supported this administrative

regulation to establish procedures for board authorization of protocols for pharmacists under the direction of prescribers to provide mutually agreed upon services. Healthcare access in Kentucky was a growing concern, and this program promised to be an important component in bridging the gap, especially in rural areas. This program provided for evidence-based, prescriber-driven, board-authorized protocols to enhance patient and public health. Pharmacists were only authorized to provide these services based on specific prescriber-driven protocols approved by the board pursuant to rigorous criteria. Pharmacists did not have independent authority to prescribe and dispense medication. In response to comments by Dr. Swiney, Dr. Freeman stated that the Kentucky Pharmacists Association met with KAFP and other stakeholders regarding concerns about this administrative regulation. Separate administrative regulations for each protocol was going to be a lengthy process; therefore, a decision was made to develop a regulatory process for the board itself to approve or deny the protocols. The general protocol development requirements were based on the naloxone protocol requirements.

Dr. Stowe stated that Sullivan University College of Pharmacy fully supported this administrative regulation. Pharmacist education prepared students for team-based collaborative, direct-patient care as part of an inter-professional healthcare team. Training included collecting and interpreting evidence; prioritizing problems; formulating assessments and recommendations; implementing, monitoring, and adjusting plans of care; and documenting services. Pharmacists were fully prepared to perform protocol-based care, and this administrative regulation required that any protocol initiated between a pharmacist and a prescriber (and authorized by the board) must establish that any additional education necessary shall be completed prior to protocol implementation.

Ms. Kenney, as a pharmacist with Norton HealthCare and president for the Kentucky Society of Health-system Pharmacists, stated that pharmacists had long been trained to perform collaboratively with prescribers. Kentucky citizens deserved this type of care, which was timely, proactive, and collaborative. Pharmacists were ready to implement this administrative regulation.

Dr. Swiney stated that the KAFP was opposed to this administrative regulation because the proposed protocols were inappropriately broad. When the KAFP met with the Kentucky Pharmacists Association and the board about this program, the initial proposal was for nine (9) to eleven (11) diagnoses and associated protocols for matters such as smoking cessation. While protocols for vaccinations for immunization and naloxone for opioid overdose had proven very successful, this administrative regulation reached far beyond that and included the potential for 1,000 new protocols. The only limitation was the prohibition on the dispensing of controlled substances. Patient care needed to be individualized, especially for those with complicated diseases such as diabetes. Improper clinical knowledge or diagnosis could be life threatening. Continuity of care may be disrupted. For example, a patient may be in the process of being weaned from a medication, but a pharmacist may not be aware that the dosage was being scaled back. This administrative regulation required an attempted communication with the primary care provider within thirty (30) days; however, this deadline was unacceptable. Communication should be required within twenty-four (24) to forty-eight (48) hours. For a patient without a primary care provider, this administrative regulation does not address assisting the patient in finding a provider. A pharmacist, while an important member of a healthcare team, was not a primary care provider. Section 2 of this administrative regulation referenced "other professional services;" however, the term was vague and needed to be defined. Other pertinent issues not addressed by this administrative regulation included pharmacist examination fees, increased pharmacist malpractice requirements, patients on multiple medications, and nonmedicinal modalities such as physical therapy or nutritional assessment. The protocols are required to have Board of Pharmacy approval, but not necessarily approval of the Kentucky Board of Medical Licensure or the Kentucky Board of Nursing. There would not General Assembly input in the protocols as was statutorily required with vaccinations for immunization. Naloxone was vetted by the General Assembly for public safety prior to that

protocol being put in place. It was unclear if protocols would vary from pharmacy to pharmacy or be consistent throughout the Commonwealth. The REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT did not clarify if additional pharmacist education would be necessary for the new protocols and, if so, what the procedural requirements would be. The scope of this administrative regulation should be limited to address some of these concerns.

Co-Chair Harris stated that the board was required to ensure patient safety and care throughout the protocol system. It was concerning, especially from a continuity of care angle, that this administrative regulation was expanding pharmacists authority. The subcommittee did not request that the board defer consideration of this administrative regulation because the Interim Joint Committee on Health and Welfare and Family Services planned to meet in December and this administrative regulation was going to be considered at that subject matter-specific committee meeting. Co-Chair Harris asked the board to work with all stakeholders to ensure patient safety and an appropriate administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, and CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

[201 KAR 20:505E](#). Enhanced nurse licensure compact. Nathan Goldman, general counsel, represented the board.

Board of Licensure for Occupational Therapy

[201 KAR 28:200](#). Continuing competence. Jared Downs, counsel, and Stacy Grider, occupational therapist, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 28:235](#). Telehealth occupational therapy services.

In response to a question by Co-Chair Harris, Ms. Grider stated that telehealth occupational therapy included services such as follow ups regarding home exercise, caregiver education, and visual or cognitive therapy.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend Section 1 to: (a) add a definition for "client;" and (b) include an occupational therapist assistant under the definition of "telehealth occupational therapy;" (3) to amend Section 2 to: (a) clarify that contact methods included the use of a telephone number or mailing address, and an emergency on call telephone number for emergency purposes; and (b) establish that a client shall be informed by the credential holder of the potential risks of inadvertent access of protected health information, and how the credential holder may elect to discontinue the provision of services through telehealth; and (4) to amend Sections 2, 3, 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.

Board of Licensed Professional Counselors

[201 KAR 36:030](#). Continuing education requirements. Brian Judy, assistant attorney general, and Martin Wesley, dean, School of Counseling, University of the Cumberlands; former board chair; and current board member, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to add a state counseling licensure board to the list of providers not requiring board review and approval; and (2) to amend Section 10 to clarify: (a) that the continuing education requirement shall be completed on or before the renewal date established in 201 KAR 36:075; and (b) if the deadline is missed, the applicant shall submit a reinstatement application. Without objection, and with agreement of the agency,

the amendments were approved.

[201 KAR 36:050](#). Complaint management process.

A motion was made and seconded to approve the following amendments: to amend Section 5 to: (1) clarify that the Complaint Screening Committee may recommend to the board that a private written reprimand be issued; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 36:060](#). Qualifying experience under supervision.

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.

[201 KAR 36:065](#). Licensed professional clinical counselor supervisor.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend Section 1 to: (a) clarify the supporting documentation the applicant shall submit with the application; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 3 to revise the LPCC-S Application. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 36:070](#). Application, education, and examination requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to: (a) clarify that submission of the criminal background check shall be within fourteen (14) days of its receipt rather than of its completion; (b) clarify that an applicant does not have to disclose expunged cases for the purposes of a conviction; and (c) require an applicant who does not receive the FBI background check within 180 days of the issuance of a license to notify the board in writing; (2) to amend Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 6 to add provisions pursuant to the approval of remedial work; and (4) to update the Application for Licensed Professional Clinical Counselor to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 36:072](#). Reciprocity requirements for applicants licensed or certified in another state.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to: (a) clarify that submission of the criminal background check shall be within fourteen (14) days of its receipt rather than of its completion; (b) clarify that an applicant does not have to disclose expunged cases for the purposes of a conviction; and (c) require an applicant who does not receive the FBI background check within 180 days of the issuance of a license to notify the board in writing; (2) to amend Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 5 to update the Application for Licensed Professional Clinical Counselor by Reciprocity. 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 1:086](#). Repeal of 301 KAR 1:085, Mussel shell harvesting. Amber Arnett, staff attorney; Ron Brooks, fisheries division director; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Senator Clark, Mr. Brooks stated that the department's programs to combat Asian carp encroachment were developing well, although more Asian carp reduction was necessary. Western Kentucky had three (3) fish processors, and one (1) processor expected to triple production after contracting with a new partner. The department, in conjunction with the public, was also creating a new fish house to

distribute fish to the various processors. Kentucky Afield did a great job with the Asian carp tournament, including a video to demonstrate the problems and possible solutions pertaining to encroachment of the species.

[301 KAR 1:130](#). Live bait for personal use.

[301 KAR 1:155](#). Commercial fishing requirements.

[301 KAR 1:410](#). Taking of fish by nontraditional fishing methods.

In response to questions by Co-Chair Upchurch, Mr. Brooks stated that nontraditional fishing methods included fishing techniques such as trot lines, jug lines, spear fishing, noodling, or any fishing method that did not include a fishing pole and line.

Department of Agriculture: Office of Consumer Protection: Aerial Recreational Devices and Facilities

[302 KAR 17:010](#). Requirements for operating and inspecting aerial recreational devices and facilities. Joe Bilby, general counsel; Jason Glass, assistant director; and Clint Quarles, staff attorney, represented the department.

In response to questions by Co-Chair Harris, Mr. Bilby stated that this administrative regulation did not apply to private zip lines, such as a backyard assembly for family use. Mr. Quarles stated that the department expected that approximately 100 zip lines would be subject to this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 and 7 through 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: 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. Aaron Keatley, commissioner, and Jon Maybriar, deputy director, represented the Division of Waste Management pertaining to administrative regulations in 401 KAR Chapters 31 through 39, 43, and 44 and KAR Title 410. Bruce Scott, deputy secretary, and Larry Taylor, environmental science consultant, represented the Department for Environmental Protection pertaining to administrative regulations in 401 KAR Chapters 45 and 48. Rick Bender, executive advisor, represented the Department for Natural Resources pertaining to administrative regulations in 805 KAR Chapters 1 and 9. Jennifer Wolsing, staff attorney, represented the Department for Public Health pertaining to 902 KAR 100:180. Jeff Baird, director, Division of Mine Permits, and Allen Luttrell, commissioner, represented the Department for Natural Resources pertaining to administrative regulations in 405 KAR Chapters 7, 8, 10, 12, 16, 18, and 20.

In response to questions by Representative Marzian, Mr. Keatley stated that the administrative regulations in 401 KAR Chapters 31 through 39, 43, and 44 and KAR Title 410 were being reorganized, but the requirements were not being substantively amended. These administrative regulations did not deviate from federal requirements except in instances of statutorily required, Kentucky-specific provisions. Fees mostly remained the same; however, there was a new, voluntary fee for very small generators in specific circumstances. Discounts were available regarding that fee.

In response to a question by Co-Chair Harris, Mr. Keatley stated that this was part of a seven (7) to eight (8) years process to consolidate and streamline these administrative regulations.

In response to a question by Co-Chair Upchurch, Mr. Keatley stated that the primary concern from petroleum marketers was the fee; therefore, an amendment was made to clarify that the fee was voluntary.

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.

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.

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.

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.

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.

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.

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.

Hazardous Waste Fees

[401 KAR 39:005](#). Definitions for 401 KAR Chapter 39.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[401 KAR 39:011](#). Repeal of 401 KAR 39:100 and 401 KAR 39:110.

[401 KAR 39:060](#). General requirements.

A motion was made and seconded to approve the following

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend Sections 1 through 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 39:080. Hazardous waste handlers.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 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.

401 KAR 39:090. Hazardous waste permit program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraph to add citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 5 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 39:120. Permit review, determination timetables, and fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

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.

Special Waste

401 KAR 45:060. Special waste permit-by-rule.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standards for Solid Waste Facilities

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 48:090. Operating requirements for contained landfills.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3, 4, 10, 11, and 14 through 16 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to require, rather than allow, a public comment process for a minor permit modification. Without objection, and with agreement of the agency, the amendments were approved.

Department for Natural Resources: Division of Mine Permits: General Provisions

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

In response to questions by Co-Chair Harris, Mr. Luttrell

stated that, regarding administrative regulations in 405 KAR Chapters 7, 8, 10, 12, 16, 18, and 20, "in situ mining" was extracting coal with the coal seam in place by pneumatic or chemical processes. Mr. Luttrell did not know of any in situ mining conducted in Kentucky; however, the requirements were federally mandated. "Shadow area" was the area above drilling in situations of auger mining or, in underground mining, the area over the face excavation or box cut. "Auger mining" was a process of removing a portion of the overburden and drilling into the coal seam to extract coal. While there were few impacts to the surface in these types of mining, mining activities continued to be subject to requirements for things like subsidence, depression mitigation, and notice to on-site dwellings.

In response to a question by Senator Adams, Mr. Luttrell stated that the "shadow area" provisions applied only to coal mining activities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 7:095. Assessment of civil penalties.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 and Appendix A to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Permits

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 8:010. General provisions for permits.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5 through 9, 11 through 14, and 16 through 25 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 8:040. Underground coal mining permits.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, 9, 10, 12 through 16, 18, 20 through 24, 26 through 32, and 34 through 38 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 8:050. Permits for special categories of mining.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Bond and Insurance Requirements

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without

objection, and with agreement of the agency, the amendments were approved.

Inspection and Enforcement

[405 KAR 12:001](#). Definitions for 405 KAR Chapter 12.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Performance Standards for Surface Mining Activities

[405 KAR 16:001](#). Definitions for 405 KAR Chapter 16.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 16:110](#). Surface and groundwater monitoring.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Performance Standards for Underground Mining Activities

[405 KAR 18:001](#). Definitions for 405 KAR Chapter 18.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 18:010](#). General provisions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 18:040](#). Casing and sealing of underground openings.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 18:060](#). General hydrologic requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 6 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 18:110](#). Surface and groundwater monitoring.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 18:260](#). Other facilities.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Special Performance Standards

[405 KAR 20:001](#). Definitions for 405 KAR Chapter 20.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 20:080](#). In situ processing.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) amends the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[405 KAR 20:090](#). Underground only permits.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Waste Management: Certificates of Environmental Safety and Public Necessity

[410 KAR 1:002](#). Repeal of 410 KAR 1:010 and 410 KAR 1:020.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Oil and Gas: Division

[805 KAR 1:060](#). Plugging wells.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Section 2 to clarify expiration; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[805 KAR 1:071](#). Repeal of 805 KAR 1:070.

Division of Oil and Gas: Coal Bed Methane

[805 KAR 9:041](#). Repeal of 805 KAR 9:040.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Plumbing, Boiler Section: Boilers and Pressure Vessels

[815 KAR 15:010](#). Definitions for 815 KAR Chapter 15. Mark Jordan, chief boiler inspector; Steven Milby, commissioner; and David Startzman, general counsel, represented the division.

In response to questions by Co-Chair Harris, Mr. Jordan stated that these administrative regulations were consistent with national standards established in the National Board Inspection Code. Mr. Startzman stated that the division did not receive comments of concern from stakeholders who seemed to recognize the need for standardization.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[815 KAR 15:025](#). New installations, general design, construction, and inspection criteria for boilers, pressure vessels, and pressure piping.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[815 KAR 15:026](#). Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[815 KAR 15:027](#). Fees and certificates for boiler and pressure vessel inspection.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[815 KAR 15:041](#). Repeal of 815 KAR 15:040, 815 KAR 15:051, and 815 KAR 15:060.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Benefit Exchange: Office of Health Policy: State Health Plan

[900 KAR 5:020](#). State Health Plan for facilities and services. Eric Clark, chief of staff; Molly Lewis, deputy general counsel and acting director of Certificate of Need; and Brandon Smith, director, Office of Legislative and Regulatory Affairs, represented the office. Nancy Galvagni, senior vice president, Kentucky Hospital Association, appeared in support of this administrative regulation. Mary Haynes, CEO, Nazareth Home, and Betsy Johnson, president, Kentucky Association of Healthcare Facilities, appeared in opposition to this administrative regulation.

In response to questions by Senator Adams, Mr. Clark stated that the office considered stakeholder input in developing this administrative regulation. The office received 420 public comments prior to filing this administrative regulation, and 400 public comments were submitted after filing. This version of the State Health Plan removed a pilot project related to cardiac catheterization in hospitals, streamlined home health services, and addressed post-acute rehabilitation related to long-term care. Post-acute rehabilitation was not related just to nursing home beds pursuant to Medicare, but also included skilled nursing facility beds pursuant to both Medicare and Medicaid. This administrative regulation created a post-acute transitional-bed four (4) site pilot project, including two (2) urban sites and two (2) rural sites, to evaluate whether or not these beds would improve quality of care, reduce hospital readmission rates, and improve access for Kentucky's aging population. The office did not want to defer consideration of this administrative regulation to the December subcommittee meeting because there had already been sufficient public input and the office did not want to further delay important programs related to the opioid abuse epidemic and neonatal intensive care units. Ms. Lewis stated that this administrative regulation provided flexibility by allowing capable hospitals, exterior to the Certificate of Need process, to treat infants that needed additional special neonatal services.

Senator Adams stated that, as with the Board of Pharmacy administrative regulation, 201 KAR 2:380, this administrative regulation would be considered further by the Interim Joint Committee on Health and Welfare and Family Services at its December meeting.

In response to a question by Senator Clark, Mr. Clark stated that employees had criminal background checks through the Kentucky State Police.

Ms. Galvagni stated that Kentucky Hospital Association strongly supported the State Health Plan. The neonatal intensive

care unit flexibility was important, especially in rural areas. The home health changes and the transitional-bed four (4) site pilot project were also good for Kentucky. Currently, hospitals received financial penalties if a patient was discharged and readmitted within thirty (30) days, regardless of the reason. In 2017, the state-wide penalty total was \$18 million. Patients had access problems in finding quality high-skilled long-term care providers. It was taking from weeks to months to place patients in certain situations. This administrative regulation gave those patients a choice to stay in the hospital or seek another provider facility.

Ms. Johnson stated that the Kentucky Association of Healthcare Facilities was opposed to this administrative regulation because the post-acute transitional-bed four (4) site pilot project increased costs to the Medicaid program. Members of the Kentucky Association of Healthcare Facilities filed over 200 letters of concern regarding these changes to the State Health Plan. The cabinet's own data indicated a surplus of long-term care beds. This plan was bad public policy, and the cabinet was acting in excess of its statutory authority. Kentucky was below the national average on readmission to a hospital within thirty (30) days after discharge. The association requested that this administrative regulation be amended to remove the post-acute transitional-bed four (4) site pilot project.

Ms. Haynes stated that Nazareth Home was opposed to the post-acute transitional-bed four (4) site pilot project because the rationale and criteria for the project was erroneous. There was already a surplus of beds, and this plan provided the potential for an unlimited number of skilled nursing facility beds. There was not a clear problem the pilot program was attempting to remedy. Long-term care facilities were subject to the same financial penalties for patient readmission within thirty (30) days after discharge. Performance penalties were a major issue in a state that ranked high in obesity, smoking, lack of physical activity, poverty, and hypertension. Insurance markets were unstable and would affect long-term care facilities; therefore, this project was untimely. Pilot project goals and criteria were vague.

In response to a question by Representative Marzian, Ms. Haynes stated that SNF beds were skilled nursing facility beds.

Representative Marzian stated that she would like to see an amendment at the December meeting of the Interim Joint Committee on Health and Welfare and Family Services, to remove the post-acute transitional-bed four (4) site pilot project from the State Health Plan until more data was available and more specific standards were included. It was important to protect taxpayer funds when there was already a surplus of beds. Representative Marzian requested that the cabinet work with Ms. Johnson and Ms. Haynes and be prepared with detailed support data at the December committee meeting.

In response to questions by Co-Chair Harris, Ms. Lewis stated that each applicant was required to demonstrate the ability to provide a given type of care for a specified length of time, with the patient then being discharged to the needed care situation. The pilot project was needed because this was a different type of service, outside of the normal need methodology. There were complex reasons for surplus beds, such as gender of the patient that may necessitate one (1) person per room, rather than multiple people.

In response to a question by Co-Chair Upchurch, Ms. Lewis stated that the beds discussed in Clinton County were skilled nursing facility beds.

Co-Chair Harris stated that Kentucky was in a difficult time period for these issues. Communication was key.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to change the edition date of the state health plan; and (2) to amend the material incorporated by reference to delete superfluous language. Without objection, and with agreement of the agency, the amendments were approved.

Division of Audits and Investigations: Controlled Substances

[902 KAR 55:110](#). Monitoring system for prescription controlled substances. Steve Davis, inspector general; Stephanie Hold, director, Office of Legal Services; Jill Lee, pharmacist; and Brandon Smith, director, Office of Legislative and Regulatory

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Affairs, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Public Health: Radon

[902 KAR 95:040](#). Radon Contractor Certification Program. Laura Begin, legislative and regulatory analyst; Erica Brakefield, section supervisor; Brandon Smith, director, Office of Legislative and Regulatory Affairs; and Ken Spach, branch manager, represented the department.

In response to questions by Co-Chair Harris, Ms. Begin stated that the department met with providers and made further amendments to this administrative regulation to address public health concerns. The underlying concern about competition in the marketplace was also addressed in balance with the public health concerns. This program had very strict authorizing statutes; however, this administrative regulation was able to delete some administrative burdens while still protecting public health.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4 through 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to delete three (3) definitions; (3) to amend Section 4 to delete language that a mitigation system shall be designed to reduce a radon concentration in each area within the footprint of the building as low as reasonably achievable; (4) to amend Section 4 to require additional radon mitigation and testing until the level is as low as reasonably achievable if there was a failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter; and (5) to amend Section 5 to require a dually certified person to acquire sixteen (16) hours of continuing educational credits per year and to delete the ABIH, AIHA, and WHO from the list of radon training courses or standard operating procedures approved. Without objection, and with agreement of the agency, the amendments were approved.

Radiology

[902 KAR 100:180](#). Technologically enhanced naturally occurring radioactive material related to oil and gas development.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 8 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: Division of Policy and Operations: Medicaid Services

[907 KAR 1:045](#). Reimbursement provisions and requirements regarding community mental health center services. Donna Little, regulatory compliance senior policy advisor, and Brandon Smith, director, Office of Legislative and Regulatory Affairs, represented the division.

In response to a question by Co-Chair Harris, Ms. Little stated that 907 KAR 1:102 and 1:104 had agency amendments to revise definitions for consistency with other administrative regulations that were amended through the Amended After Comments process.

[907 KAR 1:047](#). Community mental health center primary care services.

[907 KAR 1:102](#). Advanced practice registered nurse services.

A motion was made and seconded to amend Section 1 to revise the definition of "provider group" for consistency with other department regulations. Without objection, and with agreement of the agency, the amendments were approved.

[907 KAR 1:104](#). Reimbursement for advanced practice registered nurse services.

A motion was made and seconded to approve the following

amendments: to amend Section 1 to revise the definition of "provider group" for consistency with other department administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

[907 KAR 1:479](#). Durable medical equipment covered benefits and reimbursement.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

[922 KAR 1:140 & E](#). Foster care and adoption permanency services. Michelle Anderson, assistant director; Elizabeth Caywood, executive advisor; Eric Clark, chief of staff; Gretchen Marshall, assistant director; and Brandon Smith, director, Office of Legislative and Regulatory Affairs, represented the division.

In response to questions by Representative Petrie, Ms. Caywood stated that the division had completed an analysis of the court's foster care determination in the case of *D.O. v. Glisson*; however, the programmatic planning from that analysis was still ongoing. The division was presenting the analysis at the Interim Joint Committee on Appropriations and Revenue at the November 20 meeting. Further details would be discussed at that committee meeting. Programmatic changes had the potential to impact state plans, funding, and administrative regulations. The division had a Kinship Care Hotline for those who may be eligible for foster care maintenance payments. Each case had to be reviewed individually to determine eligibility.

Representative Petrie expressed his gratitude to this agency. This was one of the most important areas of service within government.

In response to questions by Senator Clark, Ms. Caywood stated that, on November 5, 2017, at the time the Statewide Foster Care Data Fact Sheet was created, Kentucky had 8,667 children in out-of-home care. Ms. Anderson stated that it was not possible to determine how many of these children were removed from a home because the parent only had a violation related to cannabis, but the number was probably very low. Usually a removal related to cannabis included other complicating factors such as neglect or abuse. Mr. Clark expressed his gratitude to all those who worked so hard for almost a decade on this important regulatory package.

[922 KAR 1:320](#). Service appeals.

[922 KAR 1:330](#). Child protective services.

[922 KAR 1:421](#). Repeal of 922 KAR 1:420.

[922 KAR 1:430](#). Child protective services in-home case planning and service delivery.

A motion was made and seconded to approve the following amendments: to amend Section 3 to establish requirements. Without objection, and with agreement of the agency, the amendments were approved.

[922 KAR 1:470](#). Central registry.

A motion was made and seconded to approve the following amendments: to amend Section 5 and the Child Care Central Registry Check form to: (1) change an edition date; and (2) comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[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.

[922 KAR 1:550 & E](#). Operator's license for children in the custody of the cabinet.

Adult Services

[922 KAR 5:040](#). Standards for state-funded domestic violence shelters. Michelle Anderson, assistant director; Elizabeth

VOLUME 44, NUMBER 6 – DECEMBER 1, 2017

Caywood, executive advisor; and Steven Fisher, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[922 KAR 5:090](#). General adult services.

A motion was made and seconded to approve the following amendment: to amend Section 3 to clarify when a supervisor may approve an extension of time to complete an adult service assessment. Without objection, and with agreement of the agency, the amendment was approved.

[922 KAR 5:111](#). Repeal of 922 KAR 5:100 and 922 KAR 5:102.

Other Business: Senator Raque Adams made a motion, seconded by Representative Marzian pursuant to KRS 13A.030(1) and (3), to request that a representative of the Department of Insurance appear at the December 12, 2017 meeting of the subcommittee to discuss a potential amendment to clarify 806 KAR 12:095, Section 9(1)(b). Without objection, the motion was approved.

The following administrative regulations were deferred or removed from the November 13, 2017, subcommittee agenda:

GENERAL GOVERNMENT CABINET: Board of Pharmacy

[201 KAR 2:390 & E](#). Third-party logistics provider.

[201 KAR 2:400 & E](#). Outsourcing facility.

Board of Nursing

[201 KAR 20:065](#). Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

Hunting and Fishing

[301 KAR 3:022](#). License, tag, and permit fees.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Air Quality: New Source Standards

[401 KAR 59:015](#). New indirect heat exchangers.

Existing Source Standards

[401 KAR 61:015](#). Existing indirect heat exchangers.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Parole Board

[505 KAR 1:170](#). Department of Juvenile Justice Policies and procedures: Prison Rape Elimination Act of 2003 (PREA).

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

[601 KAR 2:030 & E](#). Ignition interlock.

Department of Aviation: Airport Development

[602 KAR 15:030](#). Fees for services and facilities of the Capitol City Airport.

Division of ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Mine Safety: Miner Training, Education and Certification

[805 KAR 7:020](#). Training and certification of inexperienced miners.

[805 KAR 7:030](#). Annual retraining.

[805 KAR 7:040](#). Training of newly employed miners.

[805 KAR 7:050](#). Training of miners for new work assignments.

[805 KAR 7:060](#). Program approval.

Sanctions and Penalties

[805 KAR 8:030](#). Criteria for the imposition and enforcement of sanctions against certified miners.

[805 KAR 8:040](#). Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

[805 KAR 8:050](#). Criteria for the imposition and enforcement of sanctions against noncertified personnel.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Benefit Exchange: Office of Health Policy: Kentucky Health Benefit Exchange

[900 KAR 10:031](#). Repeal of 900 KAR 10:030 and 900 KAR 10:100.

Payment and Services

[907 KAR 3:005](#). Coverage of physicians' services.

[907 KAR 3:010](#). Reimbursement for physicians' services.

The subcommittee adjourned at 12:20 p.m. until December 12, 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 BANKING AND INSURANCE
Meeting of October 24, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Banking and Insurance for its meeting of 10/24/2017, having been referred to the Committee on 10/4/2017, pursuant to KRS 13A.290(6):

806 KAR 5:031
806 KAR 7:011
806 KAR 17:575
806 KAR 24:022

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 10/24/2017 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 November 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 11/2/2017, having been referred to the Committee on 11/1/2017, pursuant to KRS 13A.290(6):

402 KAR 3:010 and 402 KAR 3:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 14, 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 November 13, 2017,

having been referred to the Committee on November 1, 2017, pursuant to KRS 13A.290(6):

702 KAR 7:065

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 November 13, 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 November 15, 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 November 15, 2017, having been referred to the Committee on November 1, 2017, pursuant to KRS 13A.290(6):

201 KAR 9:260
201 KAR 13:040
201 KAR 13:060
201 KAR 20:057
201 KAR 22:020
201 KAR 22:040
201 KAR 22:070
900 KAR 11:010

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 15, 2017 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

F - 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

F - 11

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

F - 20

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

F - 21

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 *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
 ** Withdrawn, not in effect within 1 year of publication
 *** Withdrawn before being printed in Register
 ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
 (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.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

301 KAR 2:225E	2112	5-12-2017
Replaced	2199	8-3-2017
501 KAR 1:030E	2115	4-17-2017
Replaced		See 44 Ky.R.
787 KAR 2:040E	1922	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 1:041E(r)	1924	3-31-2017
Expired		9-27-2017
907 KAR 3:206E(r)	1925	3-31-2017
Expired		9-27-2017
907 KAR 23:001E	1927	3-31-2017
Expired		9-27-2017
907 KAR 23:010E	1930	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 23:020E	1935	3-31-2017
Replaced		See 44 Ky.R.

ORDINARY ADMINISTRATIVE REGULATIONS:

4 KAR 1:010		
Amended	2176	See 44 Ky.R.
4 KAR 1:040		
Amended	2178	See 44 Ky.R.
4 KAR 1:050	2239	See 44 Ky.R.
16 KAR 2:020		
Amended	2005	See 44 Ky.R.
16 KAR 5:020		
Amended	2008	See 44 Ky.R.
16 KAR 6:020		
Amended	1627	7-7-2017
16 KAR 8:040		
Amended	2011	See 44 Ky.R.
30 KAR 2:010		
Amended	2180	See 44 Ky.R.
30 KAR 5:060		
Amended	2182	See 44 Ky.R.
40 KAR 2:145		
Amended	2013	See 44 Ky.R.
40 KAR 2:150		
Amended	2015	See 44 Ky.R.
200 KAR 5:080		
Repealed	2240	9-1-2017
200 KAR 5:081(r)	2240	9-1-2017
201 KAR 2:074		
Amended	1796	See 44 Ky.R.
201 KAR 2:076		
Amended	2184	See 44 Ky.R.

201 KAR 20:056		
Amended	1799	
As Amended	2125	6-21-2017
201 KAR 20:057		
Amended	1802	6-21-2017
201 KAR 20:070		
Amended	2187	See 44 Ky.R.
201 KAR 20:110		
Amended	2189	See 44 Ky.R.
201 KAR 20:225		
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.
201 KAR 26:185		
Amended	1827	See 44 Ky.R.
201 KAR 26:190		
Amended	1829	See 44 Ky.R.
201 KAR 26:200		
Amended	1831	See 44 Ky.R.
201 KAR 26:210		
Amended	1833	See 44 Ky.R.
201 KAR 26:215		
Amended	1834	See 44 Ky.R.
201 KAR 26:225	1900	See 44 Ky.R.
201 KAR 26:250		
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		
Amended	2023	See 44 Ky.R.
201 KAR 34:030		
Amended	2025	See 44 Ky.R.
201 KAR 34:050		
Amended	2029	See 44 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 39:001			401 KAR 49:011		
Amended	1636		Amended	2202	See 44 Ky.R.
Am Comments	2160	See 44 Ky.R.	401 KAR 49:040		
201 KAR 39:030			Repealed	2205	9-8-2017
Amended	1639	See 44 Ky.R.	401 KAR 49:080		
201 KAR 39:050			Amended	2205	9-8-2017
Amended	1846	See 44 Ky.R.-	401 KAR 49:090		
201 KAR 39:070			Repealed	2205	9-8-2017
Amended	1640		401 KAR 49:091(r)	2241	9-8-2017
Am Comments	2162	See 44 Ky.R.	401 KAR 49:210		
201 KAR 44:090			Repealed	2205	9-8-2017
Amended	2031	See 44 Ky.R.	401 KAR 100:010		
201 KAR 46:035	2077	See 44 Ky.R.	Repealed	1906	8-4-2017
201 KAR 46:040			401 KAR 100:011(r)	1906	8-4-2017
Amended	1648		405 KAR 5:095		
Am Comments	1987	See 44 Ky.R.	Amended	1869	See 44 Ky.R.
201 KAR 46:060			405 KAR 7:091		
Amended	1651	7-17-2017	Repealed	1907	8-4-2017
201 KAR 46:070			405 KAR 7:092		
Amended	1653	See 44 Ky.R.	Amended	1876	See 44 Ky.R.
201 KAR 46:090			405 KAR 7:093(r)	1907	8-4-2017
Amended	1654	See 44 Ky.R.	501 KAR 1:030		
301 KAR 2:075			Amended	2209	See 44 Ky.R.
Amended	1848		501 KAR 6:040		
As Amended	2127	7-6-2017	Amended	1889	
301 KAR 2:083			As Amended	2134	7-7-2017
Amended	1850	7-6-2017	501 KAR 6:140		
301 KAR 2:178			Amended	2212	See 44 Ky.R.
Amended	1661		505 KAR 1:130		
As Amended	2128	7-6-2017	Amended	2214	See 44 Ky.R.
301 KAR 2:221			601 KAR 1:018		
Amended	2032	7-6-2017	Amended	1890	7-7-2017
301 KAR 2:222			601 KAR 1:113		
Amended	2195	8-3-2017	Amended	2056	See 44 Ky.R.
301 KAR 2:225			601 KAR 2:030		
Amended	2199	8-3-2017	Amended	2216	
301 KAR 2:300			Withdrawn		11-15-2017
Amended	2034	See 44 Ky.R.	725 KAR 2:060		
301 KAR 3:022			Amended	2060	
Amended	2038	See 44 Ky.R.	Withdrawn	**	6-5-2017
400 KAR 1:001			725 KAR 2:070		
Amended	1853	See 44 Ky.R.	Amended	2063	See 44 Ky.R.
400 KAR 1:030			787 KAR 1:070		
Repealed	1901	8-4-2017	Amended	612	See 44 Ky.R.
400 KAR 1:031(r)	1901	8-4-2017	787 KAR 2:040		
400 KAR 1:090			Amended	2065	See 44 Ky.R.
Amended	1855		804 KAR 4:230		
Am Comments	2164	See 44 Ky.R.	Amended	2222	See 44 Ky.R.
400 KAR 1:100	1902	See 44 Ky.R.	804 KAR 10:010		
401 KAR 8:010			Amended	2224	
Amended	2040	9-8-2017	As Amended		See 44 Ky.R.
401 KAR 8:011(r)	2078	9-8-2017	806 KAR 17:575	2079	See 44 Ky.R.
401 KAR 8:020			815 KAR 7:120		
Amended	2043	See 44 Ky.R.	Amended	2067	See 44 Ky.R.
401 KAR 8:040			900 KAR 6:125		
Amended	2047	9-8-2017	Amended	2225	See 44 Ky.R.
401 KAR 8:070			900 KAR 7:030		
Repealed	2078	9-8-2017	Amended	2228	See 44 Ky.R.
401 KAR 8:075			900 KAR 7:040		
Amended	2049	See 44 Ky.R.	Amended	2232	See 44 Ky.R.
401 KAR 8:100			900 KAR 10:041(r)	1908	6-21-2017
Amended	2051	See 44 Ky.R.	900 KAR 10:050		
401 KAR 8:101			Repealed	1908	6-21-2017
Repealed	2078	9-8-2017	900 KAR 10:060		
401 KAR 8:250			Repealed	1908	6-21-2017
Amended	2055	9-8-2017	901 KAR 5:060		
401 KAR 8:550			Repealed	2242	8-16-2017
Repealed	2078	9-8-2017	901 KAR 5:061(r)	2242	8-16-2017
401 KAR 8:600			901 KAR 5:120	2243	See 44 Ky.R.
Repealed	2078	9-8-2017	902 KAR 2:060		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	1454		902 KAR 95:040		
Am Comments	1989		Amended	2234	See 44 Ky.R.
As Amended	2143	See 44 Ky.R.	906 KAR 1:080		
902 KAR 20:053(r)	2082	7-17-2017	Repealed	2086	7-17-2017
902 KAR 20:054			906 KAR 1:081(r)	2086	7-17-2017
Repealed	2082	7-17-2017	906 KAR 1:090		
902 KAR 21:030	1910		Repealed	2086	7-17-2017
As Amended	2148	6-21-2017	906 KAR 1:091(r)	2087	7-17-2017
902 KAR 22:010			907 KAR 1:065		
Repealed	2084	7-17-2017	Amended	1485	
902 KAR 22:011(r)	2084	7-17-2017	Am Comments	1997	
902 KAR 22:030			As Amended	2149	7-7-2017
Repealed	2084	7-17-2017	907 KAR 23:001	2088	10-6-2017
902 KAR 55:075			907 KAR 23:010	2091	See 44 Ky.R.
Repealed	2085	7-17-2017	907 KAR 23:020	2096	See 44 Ky.R.
902 KAR 55:076(r)	2085	7-17-2017	910 KAR 1:210		
902 KAR 55:100			Amended	2070	7-17-2017
Repealed	2085	7-17-2017			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
VOLUME 44					
<div>-----</div> 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)) (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. <div>-----</div>			Amended 13 KAR 2:120 As Amended 13 KAR 2:130 As Amended 13 KAR 3:050 Amended As Amended 16 KAR 1:015 Withdrawn 16 KAR 1:016 16 KAR 2:020 Am Comments As Amended 16 KAR 5:020 Am Comments As Amended 16 KAR 8:040 Am Comments 17 KAR 3:020 Amended As Amended 30 KAR 2:010 As Amended 30 KAR 5:060 As Amended 31 KAR 4:010 Amended As Amended 31 KAR 4:040 Amended 31 KAR 6:020 Amended 32 KAR 1:020 Amended As Amended 32 KAR 1:045 40 KAR 2:145 As Amended 40 KAR 2:150 As Amended 45 KAR 1:030 Amended 45 KAR 1:040 Amended 45 KAR 1:050 Amended As Amended 101 KAR 1:325 Amended 101 KAR 2:210 Amended 102 KAR 1:070 Amended As Amended 103 KAR 1:120 As Amended 103 KAR 15:050 Amended 103 KAR 16:240 Amended 103 KAR 16:360 Amended 103 KAR 16:391(r) 103 KAR 17:151(r) 103 KAR 18:070 Amended 103 KAR 26:110	1368 443 899 445 900 257 901 698 * 1453 225 505 228 508 231 548 902 213 214 112 510 113 114 550 1209 1170 9 10 258 260 262 729 1374 769 264 903 833 1209 1089 1091 1094 835 836 1096	 12-1-2017 12-1-2017 12-1-2017 10-13-2017 See 43 Ky.R. 10-6-2017 See 43 Ky.R. 10-6-2017 See 43 Ky.R. 10-6-2017 See 43 Ky.R. 9-1-2017 See 43 Ky.R. 9-1-2017 10-6-2017 10-6-2017 See 43 Ky.R. 8-4-2017 See 43 Ky.R. 8-4-2017 11-3-2017 11-3-2017 11-3-2017 11-3-2017 11-3-2017 12-1-2017
EMERGENCY ADMINISTRATIVE REGULATIONS (Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
17 KAR 3:020E	494	8-1-2017			
32 KAR 1:020E	496	8-15-2017			
32 KAR 1:045E	876	9-29-2017			
101 KAR 2:210E	725	9-15-2017			
201 KAR 2:390E	498	8-15-2017			
201 KAR 2:400E	500	8-15-2017			
201 KAR 12:082E	877	10-13-2017			
201 KAR 20:505E	727	9-12-2017			
301 KAR 1:152E	4	5-26-2017			
Replaced	132	9-8-2017			
501 KAR 1:030E	See 43 Ky.R.	4-17-2017			
Replaced	218	9-1-2017			
501 KAR 6:270E	183	6-28-2017			
Replaced	731	11-3-2017			
803 KAR 2:425E	185	6-26-2017			
Replaced	337	11-3-2017			
900 KAR 11:010E	187	6-29-2017			
Replaced	956	11-15-2017			
902 KAR 20:360E	191	6-16-2017			
907 KAR 3:066E	6	6-14-2017			
Replaced	152	10-6-2017			
907 KAR 23:010E	See 43 Ky.R.	3-31-2017			
Replaced		10-6-2017			
907 KAR 23:020E	See 43 Ky.R.	3-31-2017			
Replaced		10-6-2017			
921 KAR 2:040E	881	9-29-2017			
921 KAR 3:090E	883	9-29-2017			
922 KAR 1:140E	199	6-29-2017			
922 KAR 1:490E	203	6-29-2017			
922 KAR 1:550E	207	6-29-2017			
922 KAR 2:160E	886	9-29-2017			
922 KAR 2:260E	895	9-29-2017			
<div>-----</div>					
ORDINARY ADMINISTRATIVE REGULATIONS					
4 KAR 1:010		See 43 Ky.R.			
As Amended	210	9-1-2017			
4 KAR 1:040		See 43 Ky.R.			
As Amended	211	9-1-2017			
4 KAR 1:050		See 43 Ky.R.			
As Amended	212	9-1-2017			
11 KAR 4:080					
Amended	1367				
11 KAR 15:090					
Amended	107				
As Amended	502	10-6-2017			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
Amended	770		201 KAR 13:060		
103 KAR 26:120			Amended	554	
Amended	1097		As Amended	910	11-15-2017
103 KAR 27:180			201 KAR 15:030		
Amended	1100		Amended	117	
103 KAR 28:051			As Amended	911	
Amended	1101		201 KAR 15:050		
103 KAR 28:150			Amended	118	
Amended	772		As Amended	912	
103 KAR 30:235			201 KAR 15:110		
Amended	1103		Amended	121	
103 KAR 31:030			As Amended	914	
Amended	1105		201 KAR 20:057		
103 KAR 31:050			Amended	270	
Amended	774		Am Comments	740	
As Amended	1211		As Amended	916	
103 KAR 31:102			201 KAR 20:065	840	
Amended	1107		Am Comments	1364	
103 KAR 31:111			201 KAR 20:070		See 43 Ky.R.
Amended	1109		As Amended	216	8-16-2017
103 KAR 31:170			201 KAR 20:095		
Amended	1110		Amended	1381	
103 KAR 31:180			201 KAR 20:110		See 43 Ky.R.
Amended	775		As Amended	217	8-16-2017
As Amended	1211		201 KAR 20:400		
103 KAR 31:190			Amended	1382	
Amended	777		201 KAR 22:020		
103 KAR 31:200			Amended	556	
Amended	778		As Amended	919	11-15-2017
As Amended	1212		201 KAR 22:040		
103 KAR 41:120			Amended	248	
Amended	1112		As Amended	920	11-15-2017
103 KAR 44:060			201 KAR 22:070		See 43 Ky.R.
Amended	780		As Amended	17	7-17-2017
As Amended	1212		Amended	560	
103 KAR 44:070			As Amended	920	11-15-2017
Amended	782		201 KAR 26:125		See 43 Ky.R.
As Amended	1213		As Amended	18	7-17-2017
103 KAR 44:100			201 KAR 26:130		See 43 Ky.R.
Amended	783		As Amended	19	7-17-2017
As Amended	1214		201 KAR 26:140		See 43 Ky.R.
103 KAR 44:120			As Amended	21	7-17-2017
Amended	785		201 KAR 26:145		See 43 Ky.R.
103 KAR 50:021(r)	837		As Amended	22	7-17-2017
106 KAR 2:040	162		201 KAR 26:155		See 43 Ky.R.
As Amended	904		As Amended	24	7-17-2017
200 KAR 38:021(r)	839		201 KAR 26:160		See 43 Ky.R.
201 KAR 2:074		See 43 Ky.R.	As Amended	25	7-17-2017
As Amended	15	7-17-2017	201 KAR 26:165		See 43 Ky.R.
201 KAR 2:076		See 43 Ky.R.	As Amended	26	7-17-2017
As Amended	510	9-20-2017	201 KAR 26:171		See 43 Ky.R.
201 KAR 2:380	447		As Amended	26	7-17-2017
Am Comments	961		201 KAR 26:175		See 43 Ky.R.
As Amended	1215		As Amended	29	7-17-2017
201 KAR 2:390	699		201 KAR 26:180		See 43 Ky.R.
Am Comments	1363		As Amended	31	7-17-2017
201 KAR 2:400	701		201 KAR 26:185		See 43 Ky.R.
201 KAR 9:260			As Amended	32	7-17-2017
Amended	265		201 KAR 26:190		See 43 Ky.R.
Am Comments	736		As Amended	32	7-17-2017
As Amended	905	11-15-2017	201 KAR 26:200		See 43 Ky.R.
201 KAR 12:010			As Amended	34	7-17-2017
Amended	1376		201 KAR 26:210		See 43 Ky.R.
201 KAR 12:082			As Amended	35	7-17-2017
Amended	1113		201 KAR 26:215		See 43 Ky.R.
201 KAR 12:100			As Amended	36	7-17-2017
Amended	1378		201 KAR 26:225		See 43 Ky.R.
201 KAR 13:040			As Amended	37	7-17-2017
Amended	552		201 KAR 26:250		See 43 Ky.R.
As Amended	909	11-15-2017	As Amended	38	7-17-2017

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
201 KAR 26:280		See 43 Ky.R.	As Amended	921	
As Amended	38	7-17-2017	201 KAR 46:010		
201 KAR 26:290		See 43 Ky.R.	Amended	1384	
As Amended	39	7-17-2017	201 KAR 46:020		
201 KAR 28:200			Amended	1386	
Amended	124		201 KAR 46:035		See 43 Ky.R.
As Amended	1216		As Amended	51	7-17-2017
201 KAR 28:235	164		Amended	1388	
As Amended	1219		201 KAR 46:040		See 43 Ky.R.
201 KAR 31:010			As Amended	52	7-17-2017
Amended	127	11-3-2017	201 KAR 46:070		See 43 Ky.R.
As Amended	729		As Amended	54	7-17-2017
201 KAR 32:050		See 43 Ky.R.	201 KAR 46:081		
As Amended	40	7-17-2017	Amended	1390	
201 KAR 32:060		See 43 Ky.R.	201 KAR 46:090		See 43 Ky.R.
As Amended	41	7-17-2017	As Amended	55	7-17-2017
201 KAR 33:015			201 KAR 46:095	1454	
Amended	561		301 KAR 1:086(r)	844	
Withdrawn**		9-27-2017	301 KAR 1:130		
201 KAR 34:020		See 43 Ky.R.	Amended	568	
As Amended	43	8-4-2017	301 KAR 1:152		
201 KAR 34:030		See 43 Ky.R.	Amended	132	9-8-2017
As Amended	43	8-4-2017	301 KAR 1:155		
201 KAR 34:050		See 43 Ky.R.	Amended	570	
As Amended	46	8-4-2017	301 KAR 1:192		
201 KAR 35:040			Repealed	166	9-8-2017
Amended	1119		301 KAR 1:195(r)	166	9-8-2017
201 KAR 35:055			301 KAR 1:201		
Amended	1122		Amended	279	10-5-2017
201 KAR 35:070			301 KAR 1:410		
Amended	1124		Amended	574	
201 KAR 35:080			301 KAR 2:049		
Amended	128		As Amended	203	
As Amended	512	9-20-2017	Amended	513	9-8-2017
201 KAR 36:030			301 KAR 2:075		
Amended	787		Amended	1128	
As Amended	1220		301 KAR 2:081		
201 KAR 36:050			Amended	1130	
Amended	790		301 KAR 2:300		See 43 Ky.R.
As Amended	1222		As Amended	56	7-6-2017
201 KAR 36:060			301 KAR 3:022		See 43 Ky.R.
Amended	792		As Amended	58	7-6-2017
As Amended	1223		Amended	794	
201 KAR 36:065			301 KAR 3:120		
Amended	130		Amended	1134	
Amended	274		301 KAR 5:010		
As Amended	1224		Amended	1393	
201 KAR 36:070			301 KAR 5:020		
Amended	275		Amended	1394	
As Amended	1225		301 KAR 6:005		
201 KAR 36:072	842		Amended	138	9-8-2017
As Amended	1228		302 KAR 17:010	845	
201 KAR 39:001		See 43 Ky.R.	As Amended	1229	
As Amended	47	8-4-2017	400 KAR 1:001		See 43 Ky.R.
201 KAR 39:030		See 43 Ky.R.	As Amended	60	8-4-2017
As Amended	48	8-4-2017	400 KAR 1:090		See 43 Ky.R.
201 KAR 39:050		See 43 Ky.R.	As Amended	61	8-4-2017
As Amended	49	8-4-2017	400 KAR 1:100		See 43 Ky.R.
201 KAR 39:070		See 43 Ky.R.	As Amended	71	8-4-2017
As Amended	50	8-4-2017	400 KAR 1:110		
201 KAR 44:090		See 43 Ky.R.	Recodified from 405 KAR 7:092		8-4-2017
As Amended	50	8-4-2017	400 KAR 1:120		
201 KAR 45:071(r)	702		Recodified from 405 KAR 5:095		8-4-2017
As Amended	921		401 KAR 8:020		See 43 Ky.R.
201 KAR 45:110			Am Comments	233	
Amended	563		As Amended	516	9-8-2017
201 KAR 45:120			401 KAR 8:075		See 43 Ky.R.
Amended	565		Am Comments	237	9-8-2017
201 KAR 45:170			401 KAR 8:100		See 43 Ky.R.
Amended	566		As Amended	519	9-8-2017

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
401 KAR 31:002(r)	449		405 KAR 8:040		
401 KAR 32:002(r)	450		Amended	607	
401 KAR 33:002(r)	451		As Amended	1291	
401 KAR 34:002(r)	452		405 KAR 8:050		
401 KAR 35:002(r)	454		Amended	620	
401 KAR 36:002(r)	455		As Amended	1303	
401 KAR 37:002(r)	457		405 KAR 10:001		
401 KAR 38:002(r)	458		Amended	625	
401 KAR 39:005			As Amended	1307	
Amended	285		405 KAR 12:001		
As Amended	1232		Amended	628	
401 KAR 39:011(r)	459		As Amended	1309	
401 KAR 39:060			405 KAR 16:001		
Amended	299		Amended	630	
As Amended	1244		Am Comments	1005	
401 KAR 39:080			As Amended	1310	
Amended	304		405 KAR 16:110		
Am Comments	962		Amended	636	
As Amended	1249		As Amended	1315	
401 KAR 39:090			405 KAR 18:001		
Amended	308		Amended	638	
Am Comments	966		Am Comments	1011	
As Amended	1250		As Amended	1316	
401 KAR 39:120			405 KAR 18:010		
Amended	315		Amended	644	
Am Comments	973		As Amended	1321	
As Amended	1256		405 KAR 18:040		
401 KAR 43:002(r)	460		Amended	646	
401 KAR 44:002(r)	462		As Amended	1322	
401 KAR 45:060			405 KAR 18:060		
Amended	319		Amended	648	
As Amended	1258		As Amended	1323	
401 KAR 48:005			405 KAR 18:110		
Amended	320		Amended	652	
As Amended	1259		As Amended	1326	
401 KAR 48:090			405 KAR 18:260		
Amended	327		Amended	655	
Am Comments	977		As Amended	1327	
As Amended	1265		405 KAR 20:001		
401 KAR 49:011		See 43 Ky.R.	Amended	656	
Am Comments	521	9-8-2017	Am Comments	1017	
401 KAR 59:015			As Amended	1327	
Amended	797		405 KAR 20:080		
401 KAR 61:015			Amended	660	
Amended	803		As Amended	1330	
402 KAR 3:010			405 KAR 20:090		
Amended	577		As Amended	1331	
As Amended	922	11-2-2017	410 KAR 1:002(r)	463	
402 KAR 3:030			500 KAR 8:010		
Amended	579		Amended	662	
405 KAR 5:095		See 43 Ky.R.	500 KAR 8:030		
As Amended	74	8-4-2017	Amended	664	
Recodified as 400 KAR 1:120		8-4-2017	501 KAR 1:030		See 43 Ky.R.
405 KAR 7:001			As Amended	218	9-1-2017
Amended	580		501 KAR 6:110		
Am Comments	981		Amended	332	
As Amended	1268		As Amended	924	
405 KAR 7:092		See 43 Ky.R.	501 KAR 6:140		See 43 Ky.R.
As Amended	80	8-4-2017	As Amended	220	9-1-2017
Recodified as 400 KAR 1:110		8-4-2017	501 KAR 6:230		
405 KAR 7:095			Amended	334	
Amended	585		As Amended	730	11-3-2017
As Amended	1272		501 KAR 6:270		
405 KAR 8:001			Amended	335	
Amended	588		As Amended	731	11-3-2017
Am Comments	993		501 KAR 6:280		
As Amended	1274		Amended	1396	
405 KAR 8:010			503 KAR 1:140		
Amended	595		Amended	1398	
As Amended	1280		505 KAR 1:130		See 43 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
Am Comments	241	10-6-2017	805 KAR 1:060		
Amended	1137		Amended	346	
505 KAR 1:170			Am Comments	1021	
Amended	809		805 KAR 1:071(r)	464	
601 KAR 1:113		See 43 Ky.R.	805 KAR 7:020		
As Amended	92	7-6-2017	Amended	685	
601 KAR 23:020	1171		805 KAR 7:030		
602 KAR 15:030	705		Amended	686	
603 KAR 5:025	1405		805 KAR 7:040		
Amended			Amended	688	
701 KAR 8:010	1172		805 KAR 7:050		
701 KAR 8:020	1177		Amended	689	
701 KAR 8:030	1185		805 KAR 7:060		
701 KAR 8:040	1188		Amended	691	
702 KAR 7:065			805 KAR 8:030		
Amended	666		Amended	692	
As Amended	925	11-13-2017	805 KAR 8:040		
703 KAR 5:270	849		Amended	694	
704 KAR 3:370			805 KAR 8:050		
Amended	1139		Amended	696	
704 KAR 7:050			805 KAR 9:041(r)	465	
Repealed	167	10-6-2017	806 KAR 3:011(r)	466	
704 KAR 7:051(r)	167	10-6-2017	806 KAR 3:210		
725 KAR 2:070		See 43 Ky.R.	Amended	350	
Am Comments	104		Am Comments	744	
As Amended	221	8-28-2017	As Amended	938	
739 KAR 2:050			806 KAR 5:030		
Amended	670		Repealed	468	10-24-2017
As Amended	928	12-1-2017	806 KAR 5:031(r)	468	10-24-2017
780 KAR 3:072			806 KAR 5:040		
Amended	672		Repealed	468	10-24-2017
As Amended	929	12-1-2017	806 KAR 7:011	73	10-24-2017
780 KAR 3:080			806 KAR 7:011(r)	469	
Amended	677		As Amended	733	10-24-2017
As Amended	933	12-1-2017	806 KAR 9:050		
787 KAR 1:070		See 43 Ky.R.	Repealed	733	10-24-2017
As Amended	934	12-1-2017	806 KAR 9:051(r)	470	
787 KAR 2:040		See 43 Ky.R.	As Amended	733	10-24-2017
As Amended	223	8-17-2017	806 KAR 9:300		
803 KAR 1:100			Repealed	733	10-24-2017
Amended	680		806 KAR 17:575		See 43 Ky.R.
As Amended	935		Am Comments	243	
803 KAR 1:121(r)	707		As Amended	733	10-24-2017
803 KAR 2:425			806 KAR 18:011(r)	1458	
Amended	337	11-3-2017	806 KAR 18:030		
803 KAR 3:051(r)	1192		Amended	1407	
803 KAR 6:011(r)	708		806 KAR 24:020		
804 KAR 4:241(r)	1455		Repealed	471	10-24-2017
804 KAR 4:390			806 KAR 24:022(r)	471	10-24-2017
Amended	339	11-3-2017	806 KAR 39:030		
804 KAR 4:400			Amended	1149	
Amended	341	11-3-2017	808 KAR 3:050		
As Amended	731		Amended	1410	
804 KAR 4:410			808 KAR 10:081(r)	168	
Amended	343	11-3-2017	Withdrawn		7-17-2017
As Amended	732		815 KAR 7:120		See 43 Ky.R.
804 KAR 4:230		See 43 Ky.R.	As Amended	95	7-26-2017
As Amended	523	10-6-2017	815 KAR 15:010		
804 KAR 5:070			Amended	810	
Amended	682		As Amended	1334	
As Amended	936		815 KAR 15:025		
804 KAR 6:011(r)	1457		Amended	813	
804 KAR 6:020	709		As Amended	1335	
As Amended	937		815 KAR 15:026		
804 KAR 8:050			Amended	819	
Amended	345	11-3-2017	As Amended	1341	
804 KAR 10:010		See 43 Ky.R.	815 KAR 15:027		
As Amended	524	10-6-2017	Amended	823	
804 KAR 11:010			As Amended	1343	
Amended	1147		815 KAR 15:041(r)	857	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
900 KAR 5:020			907 KAR 3:005		
Amended	369		Amended	405	
Am Comments	1025		Am Comments	1048	
As Amended	1345		907 KAR 3:010		
900 KAR 6:090			Amended	410	
Amended	140		Am Comments	1054	
As Amended	524	9-20-2017	907 KAR 3:066		
900 KAR 6:125		See 43 Ky.R.	Amended	152	10-6-2017
Am Comments	246	9-20-2017	907 KAR 17:005		
900 KAR 6:130			Amended	1428	
Amended	1413		907 KAR 17:010		
900 KAR 7:030		See 43 Ky.R.	Amended	1432	
As Amended	527	9-20-2017	907 KAR 17:015		
900 KAR 7:040		See 43 Ky.R.	Amended	1441	
As Amended	530	9-20-2017	907 KAR 17:020		
900 KAR 10:031(r)	858		Amended	1446	
900 KAR 11:010	472		907 KAR 17:026(r)	1459	
Am Comments	763		907 KAR 17:035		
As Amended	956	11-15-2017	Amended	1450	
901 KAR 5:120		See 43 Ky.R.	907 KAR 23:010		See 43 Ky.R.
As Amended	223	8-16-2017	Am Comments	248	
902 KAR 2:060		See 43 Ky.R.	As Amended	536	10-6-2017
As Amended, IJC	97	6-21-2017	907 KAR 23:020		See 43 Ky.R.
902 KAR 20:016			Am Comments	253	10-6-2017
Amended	1415		921 KAR 2:040		
902 KAR 20:360			Amended	1150	
Amended	371	10-11-2017	921 KAR 3:025		
902 KAR 55:015			Amended	154	10-11-2017
Amended	143		921 KAR 3:042		
As Amended	531	9-20-2017	Amended	158	
902 KAR 55:020			Am Comments	544	10-11-2017
Repealed	169	9-20-2017	921 KAR 3:045		
902 KAR 55:025			Amended	1152	
Repealed	169	9-20-2017	921 KAR 3:090		
902 KAR 55:030			Amended	1155	
Repealed	169	9-20-2017	922 KAR 1:140		
902 KAR 55:035			Amended	416	
Repealed	169	9-20-2017	Am Comments	1060	
902 KAR 55:040			922 KAR 1:320		
Amended	147		Amended	420	
As Amended	534	9-20-2017	Am Comments	1064	
902 KAR 55:041(r)	169	9-20-2017	922 KAR 1:330		
902 KAR 55:095			Amended	425	
Amended	149		Am Comments	1068	
As Amended	534	9-20-2017	922 KAR 1:421(r)	480	
902 KAR 55:110			922 KAR 1:430		
Amended	378		Amended	431	
Am Comments	1026		Am Comments	1075	
As Amended	1346		As Amended	1357	
902 KAR 95:040		See 43 Ky.R.	922 KAR 1:470		
Am Comments	541		Amended	433	
As Amended	1348		Am Comments	1077	
902 KAR 100:180	477		As Amended	1358	
Am Comments	1029		922 KAR 1:480		
As Amended	1350		Amended	436	
907 KAR 1:045			Am Comments	1079	
Amended	382		922 KAR 1:490		
Am Comments	1033		Amended	439	
907 KAR 1:047			Am Comments	1082	
Amended	387		922 KAR 1:550	482	
Am Comments	1038		Am Comments	1086	
907 KAR 1:102			922 KAR 2:160		
Amended	391		Amended	1157	
As Amended	1352		922 KAR 2:260		
907 KAR 1:104			Amended	1166	
Amended	395		922 KAR 5:040		
As Amended	1355		Amended	826	
907 KAR 1:479			As Amended	1359	
Amended	398		922 KAR 5:090		
Am Comments	1042		Amended	830	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
As Amended 922 KAR 5:111(r)	1361 859				

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 1:140	61.315	106 KAR 2:040
13A.110	804 KAR 4:410	61.805-61.850	702 KAR 7:065
13B	201 KAR 36:030	61.870-61.884	405 KAR 8:010
	503 KAR 1:140		922 KAR 5:040
	602 KAR 15:030	61.876	922 KAR 1:470
	701 KAR 8:030	64.530	45 KAR 1:040
	902 KAR 20:360	64.810	45 KAR 1:030
	907 KAR 17:005		45 KAR 1:040
	907 KAR 17:010		45 KAR 1:050
	922 KAR 1:320	61.870	401 KAR 39:060
	922 KAR 1:480	61.884	401 KAR 39:060
	922 KAR 2:260	65.7045	103 KAR 31:180
13B.010	922 KAR 1:480		103 KAR 50:021
13B.050	922 KAR 1:330	65.7069	103 KAR 50:021
13B.120	922 KAR 1:330	65.7073	103 KAR 50:021
13B.140	922 KAR 1:330	65.7075	103 KAR 50:021
13B.150	922 KAR 1:330	65.7083	103 KAR 50:021
15.241	902 KAR 20:360	68.210	45 KAR 1:030
15.330	503 KAR 1:140		45 KAR 1:040
15.380	503 KAR 1:140		45 KAR 1:050
15.382	503 KAR 1:140	75.400	739 KAR 2:050
15.384	503 KAR 1:140	75.410	739 KAR 2:050
15.392	503 KAR 1:140	75.440	739 KAR 2:050
15.394	503 KAR 1:140	95A.210	739 KAR 2:050
15.396	503 KAR 1:140	95A.262	739 KAR 2:050
15.400	503 KAR 1:140	96A.095	907 KAR 3:066
15.440	503 KAR 1:140	117.015	31 KAR 6:020
15.540	503 KAR 1:140	117.086	31 KAR 4:040
15.565	503 KAR 1:140	117.227	31 KAR 4:010
15.580	503 KAR 1:140	117.235	31 KAR 4:040
15.3971	503 KAR 1:140	117.255	31 KAR 4:040
15A.065	505 KAR 1:130	117.275	31 KAR 6:020
	505 KAR 1:170	117.305	31 KAR 6:020
15A.0652	505 KAR 1:130	121.160	32 KAR 1:020
15A.067	505 KAR 1:130	121.172	32 KAR 1:045
	505 KAR 1:170	121.180	32 KAR 1:020
15A.070	500 KAR 8:010		32 KAR 1:045
17.165	922 KAR 1:470	131.032	103 KAR 1:120
17.500 - 17.580	922 KAR 1:490	131.081	103 KAR 1:120
18A.005	101 KAR 1:325		103 KAR 15:050
18A.030	101 KAR 2:210	131.110	103 KAR 26:110
18A.095	103 KAR 1:120	131.130	103 KAR 1:120
18A.111	101 KAR 1:325		103 KAR 16:391
18A.225	101 KAR 2:210	131.170	103 KAR 15:050
18A.0751	101 KAR 1:325	131.180	103 KAR 44:070
18A.2254	101 KAR 2:210	131.190	103 KAR 1:120
23A.010	922 KAR 1:320	131.990	103 KAR 1:120
	922 KAR 1:480	136.100	103 KAR 15:050
	922 KAR 2:260	136.392	739 KAR 2:050
23A.205	200 KAR 38:021	138.135	103 KAR 41:120
23A.206	200 KAR 38:021	138.195	103 KAR 41:120
23A.215	200 KAR 38:021	138.450 - 138.470	103 KAR 44:060
23A.2065	200 KAR 38:021		103 KAR 44:070
24A.175	200 KAR 38:021		103 KAR 44:100
24A.176	200 KAR 38:021	138.460	103 KAR 28:051
24A.180	200 KAR 38:021		103 KAR 44:120
24A.1765	200 KAR 38:021	138.463	103 KAR 28:051
40.320	17 KAR 3:020	138.990	103 KAR 44:070
40.325	17 KAR 3:020	139.010	103 KAR 26:110
42.320	200 KAR 38:021		103 KAR 26:120
43.070	45 KAR 1:030		103 KAR 27:180
	45 KAR 1:040		103 KAR 28:051
	45 KAR 1:050		103 KAR 28:150
43.075	45 KAR 1:030		103 KAR 31:030
	45 KAR 1:040		103 KAR 31:050
	45 KAR 1:050		103 KAR 31:102
45.313	922 KAR 5:040		103 KAR 31:200
45.453	602 KAR 15:030	139.105	103 KAR 28:051
45A.340	900 KAR 6:090	139.200	103 KAR 26:110
48.600 - 48.630	13 KAR 2:120		103 KAR 26:120
	13 KAR 2:130		103 KAR 28:051

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	103 KAR 28:150	149.020	402 KAR 3:010
	103 KAR 31:102	149.330	402 KAR 3:030
139.210	103 KAR 28:051	149.332	402 KAR 3:030
139.260	103 KAR 26:110	149.334	402 KAR 3:030
	103 KAR 26:120	149.344	402 KAR 3:030
	103 KAR 28:150	149.346	402 KAR 3:030
	103 KAR 30:235	149.348	402 KAR 3:030
	103 KAR 31:030	149.350	402 KAR 3:030
	103 KAR 31:111	149.355	402 KAR 3:030
139.270	103 KAR 26:110	150.010	301 KAR 1:130
	103 KAR 26:120		301 KAR 1:152
	103 KAR 28:051		301 KAR 1:155
	103 KAR 31:111		301 KAR 1:201
139.280	103 KAR 26:120		301 KAR 1:410
	103 KAR 28:051		301 KAR 2:049
	103 KAR 31:111	150.015	301 KAR 2:075
139.290	103 KAR 28:051		301 KAR 2:081
	103 KAR 31:111	150.021	301 KAR 2:075
139.300	103 KAR 31:111	150.025	301 KAR 1:086
139.310	103 KAR 26:110		301 KAR 3:022
	103 KAR 26:120	150.092	301 KAR 2:049
	103 KAR 28:051	150.110	301 KAR 1:086
139.330	103 KAR 26:110	150.120	301 KAR 1:155
	103 KAR 26:120	150.170	301 KAR 1:086
	103 KAR 28:051		301 KAR 1:130
139.340	103 KAR 28:051		301 KAR 1:152
139.430	103 KAR 28:051		301 KAR 1:155
	103 KAR 31:111		301 KAR 1:201
139.440	103 KAR 31:111		301 KAR 1:410
139.470	103 KAR 27:180		301 KAR 2:049
	103 KAR 28:150	150.175	301 KAR 1:086
	103 KAR 30:235		301 KAR 1:130
139.471	103 KAR 28:051		301 KAR 1:152
139.480	103 KAR 26:110		301 KAR 1:201
139.484	103 KAR 28:051		301 KAR 1:410
139.515	103 KAR 31:180		301 KAR 5:010
139.517	103 KAR 31:190		301 KAR 5:020
139.518	103 KAR 31:200	150.180	301 KAR 3:022
139.519	103 KAR 31:170	150.183	301 KAR 2:075
139.533	103 KAR 31:102		301 KAR 3:022
139.540	103 KAR 26:110		301 KAR 3:120
139.550	103 KAR 26:110	150.195	301 KAR 2:075
139.590	103 KAR 26:110	150.235	301 KAR 1:410
139.600	103 KAR 28:051	150.240	301 KAR 3:022
139.620	103 KAR 28:051	150.275	301 KAR 3:022
139.710	103 KAR 31:030		301 KAR 3:120
139.720	103 KAR 26:110	150.280	301 KAR 3:022
	103 KAR 28:150	150.290	301 KAR 2:081
	103 KAR 31:170		301 KAR 3:022
	103 KAR 31:190	150.305	301 KAR 2:081
139.760	103 KAR 31:111	150.320	301 KAR 2:081
139.770	103 KAR 31:170	150.330	301 KAR 2:081
139.990	103 KAR 31:111	150.340	301 KAR 1:130
141.010	103 KAR 16:240		301 KAR 1:201
	103 KAR 16:360	150.360	301 KAR 2:081
	103 KAR 17:151	150.370	301 KAR 2:049
	103 KAR 18:070		301 KAR 2:081
141.020	103 KAR 18:070	150.399	301 KAR 2:049
141.040	103 KAR 16:240	150.410	301 KAR 3:120
	103 KAR 16:360	150.445	301 KAR 1:152
141.042	103 KAR 15:050		301 KAR 1:155
141.160	103 KAR 15:050		301 KAR 1:410
141.170	103 KAR 15:050	150.450	301 KAR 1:130
141.180	103 KAR 17:151		301 KAR 1:152
141.206	103 KAR 16:240		301 KAR 1:155
141.210	103 KAR 17:151		301 KAR 3:022
141.300	103 KAR 15:050	150.485	301 KAR 3:022
141.310	103 KAR 18:070	150.520	301 KAR 1:086
141.315	103 KAR 18:070		301 KAR 3:022
141.388	103 KAR 17:151	150.525	301 KAR 3:022
141.0205	103 KAR 17:151	150.600	301 KAR 3:022
141.040	103 KAR 16:391	150.603	301 KAR 3:022
146.200-146.360	405 KAR 8:010	150.620	301 KAR 1:195
149.010	402 KAR 3:010		301 KAR 1:201

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	301 KAR 1:410	160.380	702 KAR 7:065
150.660	301 KAR 3:022		922 KAR 1:470
150.720	301 KAR 3:022	160.445	702 KAR 7:065
150.990	301 KAR 1:130	161.020	16 KAR 1:016
	301 KAR 1:152	161.028	16 KAR 1:016
	301 KAR 1:155	161.030	16 KAR 1:016
	301 KAR 1:201	161.141	701 KAR 8:010
	301 KAR 1:410		701 KAR 8:020
	301 KAR 2:049		701 KAR 8:040
	301 KAR 2:081	161.600	102 KAR 1:070
	301 KAR 5:020	161.605	102 KAR 1:070
150.995	301 KAR 2:049	161.640	102 KAR 1:070
154.27-010	103 KAR 31:190	161.675	102 KAR 1:070
154.27-070	103 KAR 31:190	161.740	704 KAR 3:370
154.030-010	103 KAR 31:180	164.001	13 KAR 2:120
154A.130	11 KAR 15:090		13 KAR 2:130
156.010	11 KAR 15:090	164.002	11 KAR 15:090
156.070	702 KAR 7:065	164.092	13 KAR 2:120
156.557	704 KAR 3:370		13 KAR 2:130
156.800	704 KAR 3:370	164.0064	13 KAR 3:050
156.808	780 KAR 3:072	164.518	11 KAR 4:080
	780 KAR 3:080	164.772	201 KAR 22:020
158.007	11 KAR 15:090		201 KAR 22:040
158.135	13 KAR 3:050	164.744	11 KAR 4:080
158.143	13 KAR 3:050	164.748	11 KAR 4:080
158.148	704 KAR 7:051	164.753	11 KAR 4:080
158.150	704 KAR 7:051	164.769	11 KAR 4:080
158.645	703 KAR 5:270	164.780	11 KAR 4:080
158.6451	703 KAR 5:270	164.785	11 KAR 4:080
158.6453	703 KAR 5:270	164.7535	11 KAR 4:080
158.6455	13 KAR 3:050	164.7871	11 KAR 15:090
	703 KAR 5:270	164.7874	11 KAR 15:090
159.140	922 KAR 1:330	164.7877	11 KAR 15:090
160.151	922 KAR 1:470	164.7879	11 KAR 15:090
160.1590	701 KAR 8:010	164.7881	11 KAR 15:090
	701 KAR 8:020	164.7885	11 KAR 15:090
	701 KAR 8:030	164.7889	11 KAR 15:090
	701 KAR 8:040	164.7890	11 KAR 4:080
160.1591	701 KAR 8:010	164.7894	11 KAR 4:080
	701 KAR 8:020	171.250	725 KAR 2:070
	701 KAR 8:030	171.260	725 KAR 2:070
	701 KAR 8:040	171.270	725 KAR 2:070
160.1592	701 KAR 8:010	174.504	602 KAR 15:030
	701 KAR 8:020	183.011	602 KAR 15:030
	701 KAR 8:030	186.010	601 KAR 23:020
	701 KAR 8:040	186.020	601 KAR 23:020
160.1593	701 KAR 8:010	186.450	922 KAR 1:550
	701 KAR 8:020	186.470	922 KAR 1:550
	701 KAR 8:030	186.480	922 KAR 1:550
	701 KAR 8:040	186.590	922 KAR 1:550
160.1594	701 KAR 8:010	186A.070	601 KAR 23:020
	701 KAR 8:020	186A.073	601 KAR 23:020
	701 KAR 8:030	186A.115	601 KAR 23:020
	701 KAR 8:040	186A.170	601 KAR 23:020
160.1595	701 KAR 8:010	189.150	902 KAR 100:180
	701 KAR 8:020	189.231	603 KAR 5:025
	701 KAR 8:030	189.340	603 KAR 5:025
	701 KAR 8:040	189A.050	200 KAR 38:021
160.1596	701 KAR 8:010	189A.103	500 KAR 8:010
	701 KAR 8:020		500 KAR 8:030
	701 KAR 8:030	194A	922 KAR 5:111(r)
	701 KAR 8:040	194A.005	922 KAR 1:320
160.1597	701 KAR 8:010		922 KAR 1:330
	701 KAR 8:020		922 KAR 1:480
	701 KAR 8:030		922 KAR 2:260
	701 KAR 8:040	194A.025	907 KAR 17:005
160.1598	701 KAR 8:010		907 KAR 17:010
	701 KAR 8:020		907 KAR 17:015
	701 KAR 8:030		907 KAR 17:020
	701 KAR 8:040		907 KAR 17:026
160.1599	701 KAR 8:010		907 KAR 17:035
	701 KAR 8:020	194A.030	922 KAR 1:320
	701 KAR 8:030		922 KAR 2:260
	701 KAR 8:040	194A.050	900 KAR 10:031(r)

KRS SECTION	REGULATION	KRS SECTION	REGULATION
194A.060	922 KAR 2:160		922 KAR 5:111(r)
	922 KAR 5:040	209A.020	922 KAR 1:320
194A.209	922 KAR 5:090		922 KAR 5:090
194A.540	201 KAR 36:030	210.366	201 KAR 28:200
194A.550	922 KAR 5:040		201 KAR 36:030
196	501 KAR 6:110	210.370 - 210.485	907 KAR 1:045
	501 KAR 6:230		907 KAR 1:047
	501 KAR 6:270		907 KAR 3:010
196.035	501 KAR 6:280	211.350 - 211.380	922 KAR 5:040
197	501 KAR 6:110	211.680 - 211.686	922 KAR 1:421
	501 KAR 6:230	211.684	922 KAR 1:330
	501 KAR 6:270		922 KAR 1:490
	501 KAR 6:280	211.842 - 211.852	902 KAR 20:016
197.020	922 KAR 5:040	211.842 - 211.990	902 KAR 100:180
198B.050	902 KAR 20:016	211.892	805 KAR 1:060
198B.260	922 KAR 1:140	211.893	805 KAR 1:060
199.011	922 KAR 1:320	213.101	902 KAR 20:360
	922 KAR 1:490	214	902 KAR 20:016
	922 KAR 1:550	214.036	922 KAR 1:330
199.462	922 KAR 1:140		922 KAR 2:160
	922 KAR 1:490	216.510	902 KAR 55:095
199.466	922 KAR 1:470	216.2970	902 KAR 20:016
199.555	907 KAR 17:005	216B.010	900 KAR 6:130
	922 KAR 1:140		902 KAR 20:016
	922 KAR 1:320	216B.010 - 216B.130	900 KAR 5:020
199.557	922 KAR 1:140		902 KAR 20:360
	922 KAR 1:320	216B.015	900 KAR 6:090
199.801	922 KAR 1:140		900 KAR 6:130
199.892	922 KAR 2:160		902 KAR 20:016
199.894	922 KAR 2:160	216B.020	900 KAR 6:090
199.896	922 KAR 1:470		900 KAR 6:130
	922 KAR 2:160	216B.040	900 KAR 6:090
199.898	922 KAR 2:160		900 KAR 6:130
199.8982	922 KAR 1:470		902 KAR 20:016
	922 KAR 2:160	216B.042	902 KAR 20:016
199.899	922 KAR 2:160		902 KAR 55:095
199.8994	922 KAR 2:160	216B.045	902 KAR 20:016
200.080 – 200.120	505 KAR 1:130	216B.0425	902 KAR 20:016
202A	907 KAR 17:005	216B.050	902 KAR 20:016
	907 KAR 17:020		902 KAR 100:180
202A.011	922 KAR 1:330	216B.055	902 KAR 20:016
205.455	922 KAR 5:040	216B.062	900 KAR 6:090
205.510	907 KAR 3:005	216B.075	902 KAR 20:016
205.520	907 KAR 1:045	216B.085	902 KAR 20:016
	907 KAR 1:047	216B.095	900 KAR 6:090
	907 KAR 1:102		900 KAR 6:130
	907 KAR 1:104	216B.105 – 216B.125	902 KAR 20:016
	907 KAR 1:479	216B.140 – 216B.175	902 KAR 20:016
	907 KAR 3:005	216B.185	902 KAR 20:016
	907 KAR 3:066	216B.190	902 KAR 20:016
205.560	907 KAR 1:479	216B.230 – 216B.239	902 KAR 20:016
	907 KAR 3:005	216B.250	902 KAR 20:016
	907 KAR 3:010	216B.400 – 216B.402	902 KAR 20:016
205.565	907 KAR 3:010	216B.990	900 KAR 6:090
205.593	907 KAR 17:015		900 KAR 6:130
205.622	907 KAR 1:047		902 KAR 20:016
	907 KAR 1:102		902 KAR 20:360
	907 KAR 3:005	216C.010	900 KAR 11:010
205.624	907 KAR 17:010	216C.030	900 KAR 11:010
205.646	907 KAR 17:035	216C.040	900 KAR 11:010
205.2005	921 KAR 3:025	216C.050	900 KAR 11:010
205.8451	907 KAR 1:045	216C.060	900 KAR 11:010
	907 KAR 1:047	216C.070	900 KAR 11:010
	907 KAR 1:102	216C.080	900 KAR 11:010
	907 KAR 3:005	216C.090	900 KAR 11:010
205.8451 – 205.8483	907 KAR 17:005	216C.100	900 KAR 11:010
209	902 KAR 20:016	216C.110	900 KAR 11:010
	922 KAR 5:090	216C.120	900 KAR 11:010
	922 KAR 5:111(r)	216C.160	900 KAR 11:010
209.020	922 KAR 1:320	216C.170	900 KAR 11:010
	922 KAR 5:040	216C.180	900 KAR 11:010
209.030	922 KAR 5:040	216C.200	900 KAR 11:010
209.140	922 KAR 5:040	216C.210	900 KAR 11:010
209A	922 KAR 5:040	216C.220	900 KAR 11:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
216C.230	900 KAR 11:010	224.43	401 KAR 31:002
217.005 - 217.215	902 KAR 55:015		401 KAR 34:002
	902 KAR 55:041		401 KAR 35:002
217.015	301 KAR 1:155		401 KAR 36:002
218A.010	902 KAR 55:015		401 KAR 37:002
	902 KAR 55:110		401 KAR 38:002
218A.020	902 KAR 55:015		401 KAR 43:002
218A.020 - 218A.130	902 KAR 55:040		401 KAR 44:002
	902 KAR 55:041		401 KAR 48:005
218A.040	902 KAR 55:015		401 KAR 48:090
218A.060	902 KAR 55:015	224.43-815	410 KAR 1:002
218A.070	902 KAR 55:095	224.46	401 KAR 31:002
218A.080	902 KAR 55:015		401 KAR 32:002
218A.100	902 KAR 55:015		401 KAR 33:002
218A.120	902 KAR 55:015		401 KAR 34:002
218A.180	902 KAR 55:095		401 KAR 35:002
218A.200	902 KAR 55:095		401 KAR 36:002
218A.202	902 KAR 55:110		401 KAR 37:002
218A.205	201 KAR 9:260		401 KAR 38:002
	201 KAR 20:057		401 KAR 39:005
218A.240	902 KAR 55:110		401 KAR 39:011
219.011 – 219.081	902 KAR 20:016		401 KAR 39:060
224	401 KAR 61:015		401 KAR 39:080
	902 KAR 100:180		401 KAR 39:090
224.1	401 KAR 31:002		401 KAR 39:120
	401 KAR 32:002		401 KAR 43:002
	401 KAR 33:002		401 KAR 44:002
	401 KAR 34:002		401 KAR 45:060
	401 KAR 35:002	224.46-505	410 KAR 1:002
	401 KAR 36:002	224.46-510	410 KAR 1:002
	401 KAR 37:002	224.46-520	410 KAR 1:002
	401 KAR 38:002	224.46-810	410 KAR 1:002
	401 KAR 39:005	224.46-820	410 KAR 1:002
	401 KAR 39:120	224.46-825	410 KAR 1:002
	401 KAR 43:002	224.46-830	410 KAR 1:002
	401 KAR 45:060	224.46-840	410 KAR 1:002
	401 KAR 48:005	224.46-850	410 KAR 1:002
	401 KAR 48:090	224.46-860	410 KAR 1:002
224.10	401 KAR 31:002	224.46-870	410 KAR 1:002
	401 KAR 32:002	224.50	401 KAR 34:002
	401 KAR 33:002		401 KAR 35:002
	401 KAR 34:002		401 KAR 38:002
	401 KAR 35:002		401 KAR 39:120
	401 KAR 36:002		401 KAR 44:002
	401 KAR 37:002		401 KAR 45:060
	401 KAR 38:002		401 KAR 48:005
	401 KAR 39:005	224.50-130	401 KAR 31:002
	401 KAR 39:011	224.50-760	410 KAR 1:002
	401 KAR 39:060	224.70	401 KAR 34:002
	401 KAR 39:080		401 KAR 37:002
	401 KAR 39:090	224.71-110	402 KAR 3:030
	401 KAR 39:120	224.71-120	402 KAR 3:030
	401 KAR 43:002	224.99	401 KAR 31:002
	401 KAR 44:002		401 KAR 32:002
	401 KAR 45:060		401 KAR 33:002
	401 KAR 48:005		401 KAR 34:002
	401 KAR 48:090		401 KAR 35:002
	401 KAR 59:015		401 KAR 36:002
224.10-100	402 KAR 3:030		401 KAR 37:002
224.40	401 KAR 31:002		401 KAR 38:002
	401 KAR 32:002		401 KAR 39:011
	401 KAR 33:002		401 KAR 39:060
	401 KAR 34:002		401 KAR 39:080
	401 KAR 35:002		401 KAR 39:090
	401 KAR 36:002		401 KAR 39:120
	401 KAR 37:002		401 KAR 45:060
	401 KAR 38:002		401 KAR 48:005
	401 KAR 39:120		401 KAR 48:090
	401 KAR 43:002	224.500	804 KAR 11:010
	401 KAR 44:002	224.590	804 KAR 11:010
	401 KAR 45:060	235.040	301 KAR 6:005
	401 KAR 48:005	235.050	301 KAR 6:005
	401 KAR 48:090	235.070	301 KAR 6:005
224.40-310	410 KAR 1:002	235.080	301 KAR 6:005

KRS SECTION	REGULATION	KRS SECTION	REGULATION
236	815 KAR 15:010		201 KAR 45:120
	815 KAR 15:025		201 KAR 45:170
	815 KAR 15:027	309.334	201 KAR 45:120
	815 KAR 15:041		201 KAR 45:170
236.010	815 KAR 15:026	309.335	201 KAR 45:071
236.030	815 KAR 15:026		201 KAR 45:120
236.110	815 KAR 15:026		201 KAR 45:170
236.240	815 KAR 15:026	309.336	201 KAR 45:170
236.250	815 KAR 15:026	309.0813	201 KAR 35:080
236.990	815 KAR 15:026	310	902 KAR 20:016
241.020	804 KAR 6:020	311.271	900 KAR 6:130
241.060	804 KAR 4:241	311.530 - 311.620	201 KAR 9:260
	804 KAR 4:400	311.550	907 KAR 17:005
	804 KAR 4:410	311.560	902 KAR 20:016
	804 KAR 6:011	311.621 – 311.643	907 KAR 17:010
243.090	804 KAR 4:390	311.710 - 311.830	902 KAR 20:360
	804 KAR 4:400	311.840	907 KAR 3:010
	804 KAR 6:020	311.840 - 311.862	907 KAR 3:005
2430200	804 KAR 8:050	311.990	201 KAR 9:260
243.380	804 KAR 4:400	311.992	902 KAR 20:016
	804 KAR 4:410	311A.170	201 KAR 20:400
243.390	804 KAR 4:400	311B	902 KAR 20:016
	804 KAR 4:410	311B.020	201 KAR 46:010
243.630	804 KAR 4:400		201 KAR 46:081
244.080	804 KAR 5:070	311B.050	201 KAR 46:020
244.085	804 KAR 5:070		201 KAR 46:095
244.090	804 KAR 5:070	311B.080	201 KAR 46:035
244.440	804 KAR 4:241	311B.100	201 KAR 46:020
247	302 KAR 17:010		201 KAR 46:081
281.010	907 KAR 3:066	311B.110	201 KAR 46:020
281.605	907 KAR 3:066		201 KAR 46:081
281.635	907 KAR 3:066	311B.120	201 KAR 46:020
281.872	907 KAR 3:066		201 KAR 46:081
281.875	907 KAR 3:066	311B.130	201 KAR 46:020
286.6 – 100	808 KAR 3:050	311B.140	201 KAR 46:020
286.6 – 225	808 KAR 3:050	311B.150	201 KAR 46:081
286.6 – 585	808 KAR 3:050	311B.160	201 KAR 46:095
286.6 – 715	808 KAR 3:050	311B.170	201 KAR 46:095
304.2-105	806 KAR 3:210	311B.180	201 KAR 46:020
304.2-180	806 KAR:011		201 KAR 46:081
304.3-100	806 KAR:011	311B.190	201 KAR 46:020
304.3-240	806 KAR:011		201 KAR 46:081
304.5-010	806 KAR 5:031	314.011	201 KAR 20:057
304.5-080	806 KAR 5:031		201 KAR 20:065
304.7-340	806 KAR 7:011		201 KAR 20:400
304 - 9	806 KAR 9:051		902 KAR 20:016
304.9-030	806 KAR 5:031		902 KAR 20:360
304.9-390	806 KAR 9:051		907 KAR 1:102
304.14-135	907 KAR 17:015		907 KAR 1:104
304.17-042	806 KAR 18:030		907 KAR 3:005
304.17A-250	806 KAR 18:030		907 KAR 17:005
304.17A-700 – 304.17A-730	907 KAR 17:015		922 KAR 2:160
304.18 – 032	806 KAR 18:030	314.021	201 KAR 20:400
304.18 – 085	806 KAR 18:030	314.041	201 KAR 20:095
304.18 - 130	806 KAR 18:011	314.042	201 KAR 20:057
304.18 - 140	806 KAR 18:011		201 KAR 20:065
304.18 - 150	806 KAR 18:011		902 KAR 20:016
304.18 - 160	806 KAR 18:011		902 KAR 20:360
304.18 - 170	806 KAR 18:011	314.051	201 KAR 20:095
304.24 - 410	806 KAR 24:022	314.091	201 KAR 20:400
304.32 – 145	806 KAR 18:030	314.175	201 KAR 20:505E
304.32 – 158	806 KAR 18:011	314.193	201 KAR 20:057
304.38 – 185	806 KAR 18:030	314.196	201 KAR 20:057
304.38 – 197	806 KAR 18:011	315.002	201 KAR 2:390
304.39-060	806 KAR 39:030		201 KAR 2:400
309.0814	201 KAR 35:070	315.005	201 KAR 2:390
309.083	201 KAR 35:055		201 KAR 2:400
	201 KAR 35:070	315.010	201 KAR 2:380
309.0831	201 KAR 35:055		201 KAR 2:400
	201 KAR 35:070	315.191	201 KAR 2:380
309.0832	201 KAR 35:070		201 KAR 2:390
309.0833	201 KAR 35:070		201 KAR 2:400
309.085	201 KAR 35:040	315.340	201 KAR 2:400
309.331	201 KAR 45:110	315.342	201 KAR 2:400

KRS SECTION	REGULATION	KRS SECTION	REGULATION
315.400	201 KAR 2:390	337.275	922 KAR 2:160
315.4102	201 KAR 2:390	339.210 - 339.450	803 KAR 1:100
315.4104	201 KAR 2:390	341.020	103 KAR 18:070
315.4106	201 KAR 2:390	341.090	103 KAR 18:070
315.4108	201 KAR 2:390	341.395	103 KAR 18:070
315.4110	201 KAR 2:390	349.025	805 KAR 9:041
316.010	201 KAR 15:110	350	405 KAR 7:001
316.030	201 KAR 15:050		405 KAR 8:001
	201 KAR 15:110		405 KAR 10:001
316.125	201 KAR 15:030		405 KAR 12:001
	201 KAR 15:110		405 KAR 16:001
316.127	201 KAR 15:110		405 KAR 18:001
316.130	201 KAR 15:030		405 KAR 20:001
316.132	201 KAR 15:030	350.010	405 KAR 20:080
316.140	201 KAR 15:030	350.020	405 KAR 8:010
317A.020	201 KAR 12:082		405 KAR 18:010
317A.040	201 KAR 12:010		405 KAR 18:260
317A.050	201 KAR 12:082	350.028	405 KAR 18:260
317A.090	201 KAR 12:082	350.055	405 KAR 8:010
317A.130	201 KAR 12:100	350.060	405 KAR 8:010
317B.020	201 KAR 12:100		405 KAR 8:040
319A.010	907 KAR 1:047	350.070	405 KAR 8:010
319A.070	201 KAR 28:200	350.085	405 KAR 8:010
319A.080	201 KAR 28:235	350.090	405 KAR 8:010
319A.160	201 KAR 28:200		405 KAR 18:010
319A.300	201 KAR 28:235	350.093	405 KAR 8:050
320.210	902 KAR 20:016		405 KAR 18:010
322.010	401 KAR 34:002	350.100	405 KAR 16:110
	401 KAR 35:002		405 KAR 18:060
	401 KAR 39:005		405 KAR 18:110
	405 KAR 8:010	350.130	405 KAR 8:010
322.340	405 KAR 8:010	350.135	405 KAR 8:010
322A.050	201 KAR 31:010	350.151	405 KAR 8:040
322A.060	201 KAR 31:010		405 KAR 18:010
322A.070	201 KAR 31:010		405 KAR 18:040
326.020	201 KAR 13:040		405 KAR 18:060
	201 KAR 13:060		405 KAR 18:110
326.035	201 KAR 13:040		405 KAR 18:260
326.040	201 KAR 13:040		405 KAR 20:080
	201 KAR 13:060		405 KAR 20:090
326.080	201 KAR 13:040	350.405	405 KAR 16:110
327.010	201 KAR 22:020		405 KAR 18:110
	907 KAR 1:047	350.410	405 KAR 18:010
327.050	201 KAR 22:020	350.420	405 KAR 16:110
	201 KAR 22:040		405 KAR 18:040
	201 KAR 22:070		405 KAR 18:060
327.060	201 KAR 22:070		405 KAR 18:110
327.070	201 KAR 22:040	350.421	405 KAR 8:040
327.075	201 KAR 22:020		405 KAR 18:060
327.080	201 KAR 22:020	350.440	405 KAR 18:010
327.310	201 KAR 22:020		405 KAR 18:060
333	902 KAR 20:360	350.450	405 KAR 8:010
333.030	902 KAR 20:016	350.445	405 KAR 8:050
334A.020	907 KAR 1:047	350.450	405 KAR 8:050
335.500	201 KAR 36:060	350.465	405 KAR 8:010
	201 KAR 36:065		405 KAR 8:050
	201 KAR 36:070		405 KAR 16:110
335.500 - 335.599	201 KAR 36:030		405 KAR 18:010
335.505	201 KAR 36:060		405 KAR 18:040
	201 KAR 36:065		405 KAR 18:060
335.515	201 KAR 36:072		405 KAR 18:110
335.525	201 KAR 36:060		405 KAR 18:260
	201 KAR 36:065		405 KAR 20:080
	201 KAR 36:070		405 KAR 20:090
335.527	201 KAR 36:070	350.500-350.521	405 KAR 8:010
335.540	201 KAR 36:050	350.990	405 KAR 7:095
335.545	201 KAR 36:050	351.102	805 KAR 7:020
336.165	803 KAR 6:011	351.103	805 KAR 7:040
336.1661	803 KAR 3:051		805 KAR 7:050
336.1662	803 KAR 3:051	351.106	805 KAR 7:030
336.1663	803 KAR 3:051	351.1041	805 KAR 8:030
336.1664	803 KAR 3:051		805 KAR 8:040
337	780 KAR 3:072		805 KAR 8:050
	803 KAR 1:121	351.120	805 KAR 8:030

KRS SECTION	REGULATION	KRS SECTION	REGULATION
351.194	805 KAR 8:040		922 KAR 1:140
	805 KAR 8:030		922 KAR 1:320
	805 KAR 8:040		922 KAR 1:550
	805 KAR 8:050		922 KAR 2:160
352	902 KAR 100:180	620.030 - 620.050	922 KAR 1:421
352.010-352.540	805 KAR 8:030	620.050	922 KAR 1:430
	805 KAR 8:040		922 KAR 1:470
	805 KAR 8:050		922 KAR 1:480
353.110	805 KAR 1:071		922 KAR 1:490
353.120	805 KAR 1:071		922 KAR 5:040
353.170	805 KAR 1:071	620.060	922 KAR 1:140
353.180	805 KAR 1:060	620.070	922 KAR 1:330
353.550	805 KAR 1:060	620.072	922 KAR 1:330
	805 KAR 1:071		922 KAR 1:430
353.739	805 KAR 1:071	620.090	922 KAR 1:140
369.101 - 369.120	907 KAR 1:047	620.140	922 KAR 1:140
	907 KAR 1:102	620.180	922 KAR 1:140
	907 KAR 3:005		922 KAR 1:320
387.025	922 KAR 1:140	620.230	922 KAR 1:320
387.500 – 387.800	907 KAR 17:010	620.350	922 KAR 1:330
387.510	907 KAR 17:005	620.990	922 KAR 1:330
403.352	922 KAR 1:470	625	922 KAR 1:490
403.720	922 KAR 5:040	625.040	922 KAR 1:140
	922 KAR 5:090	625.050 - 625.120	922 KAR 1:470
424.110-424.120	405 KAR 8:010	625.090	922 KAR 1:140
431.600	922 KAR 1:330	645	907 KAR 17:020
433.750	603 KAR 5:025	7 C.F.R.	405 KAR 7:001
433.753	603 KAR 5:025		405 KAR 8:001
439	501 KAR 6:110		405 KAR 8:040
	501 KAR 6:230		405 KAR 10:001
	501 KAR 6:270		405 KAR 16:001
439.265	501 KAR 6:280		405 KAR 18:001
439.331	501 KAR 6:280		405 KAR 20:001
439.348	501 KAR 6:280		921 KAR 3:025
439.480	501 KAR 6:280		921 KAR 3:042
439.3101	501 KAR 6:280		921 KAR 3:045
439.3104	501 KAR 6:280		921 KAR 3:090
439.3105	501 KAR 6:280		922 KAR 2:160
440.170	907 KAR 3:066	16 C.F.R.	201 KAR 15:110
446.010	501 KAR 6:280	20 C.F.R.	907 KAR 17:005
446.400	902 KAR 20:016		922 KAR 2:160
503.110	922 KAR 1:330	21 C.F.R.	902 KAR 55:015
527.100	922 KAR 1:140		902 KAR 55:040
527.110	922 KAR 1:140		902 KAR 55:041
529.010	922 KAR 1:330		902 KAR 55:095
533.030	501 KAR 6:280	27 C.F.R.	405 KAR 8:010
600 - 645	505 KAR 1:130	28 C.F.R.	505 KAR 1:170
	505 KAR 1:170	29 C.F.R.	780 KAR 3:072
600.010	922 KAR 1:330		803 KAR 1:100
	922 KAR 1:430		803 KAR 2:425
600.020	922 KAR 1:140		902 KAR 20:016
	922 KAR 1:320		902 KAR 20:360
	922 KAR 1:330	30 C.F.R.	405 KAR 7:001
	922 KAR 1:430		405 KAR 7:095
	922 KAR 1:470		405 KAR 8:001
	922 KAR 1:480		405 KAR 8:010
	922 KAR 1:490		405 KAR 8:040
	922 KAR 2:160		405 KAR 10:001
605.090	922 KAR 1:320		405 KAR 12:001
	922 KAR 1:330		405 KAR 16:001
	922 KAR 1:490		405 KAR 18:001
605.102	922 KAR 1:550		405 KAR 18:010
605.120	922 KAR 1:490		405 KAR 18:060
	922 KAR 2:160		405 KAR 20:001
605.130	922 KAR 1:330	34 C.F.R.	11 KAR 4:080
	922 KAR 1:430		922 KAR 2:160
	922 KAR 1:490	40 C.F.R.	401 KAR 31:002
610.010	922 KAR 1:330		401 KAR 32:002
610.110	922 KAR 1:140		401 KAR 33:002
610.125	922 KAR 1:140		401 KAR 34:002
610.127	922 KAR 1:140		401 KAR 35:002
620	902 KAR 20:016		401 KAR 36:002
620.010 - 620.050	922 KAR 1:330		401 KAR 37:002
620.020	907 KAR 17:005		401 KAR 38:002

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	401 KAR 39:005		405 KAR 16:001
	401 KAR 39:011		405 KAR 18:001
	401 KAR 39:060		405 KAR 18:010
	401 KAR 39:080		405 KAR 18:060
	401 KAR 39:090		405 KAR 20:001
	401 KAR 39:120	33 U.S.C.	401 KAR 38:002
	401 KAR 43:002	38 U.S.C.	922 KAR 2:160
	401 KAR 44:002	42 U.S.C.	11 KAR 15:090
	401 KAR 48:005		31 KAR 6:020
	401 KAR 48:090		401 KAR 38:002
	401 KAR 59:015		401 KAR 39:060
	401 KAR 61:015		505 KAR 1:170
	405 KAR 8:040		900 KAR 10:031(r)
	405 KAR 10:001		902 KAR 20:016
	902 KAR 20:016		907 KAR 1:045
42 C.F.R.	902 KAR 20:360		907 KAR 1:047
	902 KAR 20:016		907 KAR 1:102
	902 KAR 20:360		907 KAR 1:104
	907 KAR 1:045		907 KAR 1:479
	907 KAR 1:047		907 KAR 3:005
	907 KAR 1:102		907 KAR 3:010
	907 KAR 1:104		907 KAR 3:066
	907 KAR 1:479		907 KAR 17:005
	907 KAR 3:005		907 KAR 17:010
	907 KAR 3:010		907 KAR 17:015
	907 KAR 3:066		907 KAR 17:020
	907 KAR 17:005		907 KAR 17:026
	907 KAR 17:015		922 KAR 1:140
	907 KAR 17:020		922 KAR 1:320
	907 KAR 17:026		922 KAR 1:330
	907 KAR 17:035		922 KAR 1:421
45 C.F.R.	900 KAR 10:031(r)		922 KAR 1:430
	902 KAR 20:016		922 KAR 1:470
	907 KAR 17:010		922 KAR 1:480
	922 KAR 2:160		922 KAR 1:490
	922 KAR 2:260		922 KAR 1:550
49 C.F.R.	601 KAR 23:020		922 KAR 2:160
50 C.F.R.	301 KAR 2:075		922 KAR 2:260
	907 KAR 1:047		922 KAR 5:040
	907 KAR 1:102		922 KAR 5:090
	907 KAR 1:479	Pub.L.114-198	201 KAR 20:065
	907 KAR 3:005	2016 Ky. Acts ch. 149	922 KAR 2:160
	921 KAR 3:025	2017 Ky. Acts ch. 3	803 KAR 1:121
	922 KAR 1:140	2017 Ky. Acts ch.134, sec. 13	803 KAR 3:051
	922 KAR 1:320		803 KAR 6:011
	922 KAR 1:480		
	922 KAR 1:490		
	922 KAR 5:040		
7 U.S.C.	401 KAR 43:002		
	921 KAR 3:025		
	921 KAR 3:042		
	922 KAR 2:160		
15 U.S.C.	806 KAR 3:210		
16 U.S.C.	405 KAR 8:010		
20 U.S.C.	11 KAR 4:080		
	702 KAR 7:065		
	703 KAR 5:270		
21 U.S.C.	902 KAR 55:015		
	902 KAR 55:040		
	902 KAR 55:041		
25 U.S.C.	922 KAR 1:140		
	922 KAR 2:160		
26 U.S.C.	103 KAR 18:070		
29 U.S.C.	201 KAR 15:110		
	780 KAR 3:072		
	803 KAR 1:100		
	922 KAR 2:160		
30 U.S.C.	405 KAR 7:001		
	405 KAR 7:095		
	405 KAR 8:001		
	405 KAR 8:010		
	405 KAR 8:040		
	405 KAR 10:001		
	405 KAR 12:001		

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).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
103 KAR 18:060	6-22-2017		
103 KAR 18:080	6-22-2017		
103 KAR 18:090	6-22-2017		
103 KAR 18:120	6-22-2017		
103 KAR 26:010	8-3-2017		
401 KAR 5:037	7-14-2017		
401 KAR 8:150	10-10-2017		
401 KAR 8:200	10-10-2017		
405 KAR 5:032	6-27-2017		
405 KAR 5:070	6-27-2017		
405 KAR 5:082	6-27-2017		
907 KAR 1:006	10-6-2017		
907 KAR 1:054	10-6-2017		
907 KAR 1:065	10-30-2017		
907 KAR 1:340	10-6-2017		
907 KAR 1:604	10-6-2017		
907 KAR 1:672	10-6-2017		
907 KAR 3:225	10-6-2017		
907 KAR 3:230	10-6-2017		
907 KAR 9:005	10-6-2017		
907 KAR 9:010	10-6-2017		
907 KAR 10:015	11-16-2017		
907 KAR 20:050	10-6-2017		

SUBJECT INDEX

AGRICULTURE

Office of Consumer Protection

Requirements for operating and inspecting aerial recreational devices and facilities; 302 KAR 17:010

ALCOHOL AND DRUG COUNSELORS

Continuing education requirements; 201 KAR 35:040

Supervision experience; 201 KAR 35:070

Temporary registration or certification; 201 KAR 35:055

Voluntary inactive and retired status; 201 KAR 35:080

ALCOHOLIC BEVERAGE CONTROL

Alcoholic Beverage Control Board

Advisory opinions; 804 KAR 6:020

Repeal of 804 KAR 6:010; 804 KAR 6:011

Conduct of Business; Employees

Minors; 804 KAR 5:070

Licensing

Applications incorporated by reference; 804 KAR 4:400

License renewals; 804 KAR 4:390

Product registration and forms; 804 KAR 4:410

Repeal of 804 KAR 4:240; 804 KAR 4:241

Malt Beverage Equipment, Supplies, and Service

Equipment and supplies; 804 KAR 11:010

Transportation of Beverages

Signs on vehicles; 804 KAR 8:050

AUDITOR OF PUBLIC ACCOUNTS

Audits of:

County fee officials; 45 KAR 1:040

Fiscal courts; 45 KAR 1:050

Sheriffs' tax settlements; 45 KAR 1:030

AVIATION

Airport Development

Fees for services and facilities of the Capitol City Airport; 602 KAR 15:030

BOARDS AND COMMISSIONS

See listing below for specific subject headings:

See also Occupations and Professions

Alcohol and Drug Counselors; 201 KAR Chapter 35

Diabetes Educators; 201 KAR Chapter 45

Dietitians and Nutritionists; 201 KAR Chapter 33

Embalmers and Funeral Directors; 201 KAR Chapter 15

Hairdressers and Cosmetologists; 201 KAR Chapter 12

Licensed Professional Counselors; 201 KAR Chapter 36

Medical Imaging and Radiation Therapy; 201 KAR Chapter 46

Medical Licensure; 201 KAR Chapter 9

Nursing; 201 KAR Chapter 20

Occupational Therapy; 201 KAR Chapter 28

Ophthalmic Dispensers; 201 Chapter 13

Pharmacy; 201 KAR Chapter 2

Physical Therapy; 201 KAR Chapter 22

COMMUNITY BASED SERVICES

Child Welfare

Appeal of child abuse and neglect investigative findings; 922 KAR 1:480

Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements; 922 KAR 1:490

Central registry; 922 KAR 1:470

Child protective services; 922 KAR 1:330

Child protective services in-home case planning and service delivery; 922 KAR 1:430

Foster care and adoption permanency services; 922 KAR 1:140

Operator's license for children in the custody of the cabinet; 922 KAR 1:550

Repeal of 922 KAR 1:420; 922 KAR 1:421

Service appeals; 922 KAR 1:320

Family Support

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

Issuance procedures; 921 KAR 3:045

Simplified assistance for the elderly program or "SAFE"; 921 KAR 3:090

SNAP employment and training program; 921 KAR 3:042

Technical requirements; 921 KAR 3:025

Protection and Permanency

Adult Services

General adult services; 922 KAR 5:090

Repeal of 922 KAR 5:100 and 922 KAR 5:102; 922 KAR 5:111

Standards for state-funded domestic violence shelters; 922 KAR 5:040

Daycare

Child Care Assistance Program; 922 KAR 2:160

Child care service appeals; 922 KAR 2:260

CONTROLLED SUBSTANCES

See listing below for specific subject headings:

Inspector General (Health); 902 KAR Chapter 55

Medical Licensure; 201 KAR Chapter 9

Pharmacy; 201 KAR Chapter 2

See also specific prescribing entities

Nursing; 201 KAR Chapter 20

CORRECTIONS

Office of the Secretary

Roederer Correctional Complex; 501 KAR 6:110

Little Sandy Correctional Complex; 501 KAR 6:230

Probation and parole policies and procedures; 501 KAR 6:270

Risk and needs assessment; 501 KAR 6:280

DEPARTMENT OF STATE

See Election Finance; KAR Title 32

DIABETES EDUCATORS

Application procedures; 201 KAR 45:170

Renewal, reinstatement, and inactive status; 201 KAR 45:120

Repeal of 201 KAR 45:070; 201 KAR 45:071

Supervision and work experience; 201 KAR 45:110

EDUCATION

Charter Schools

Charter school appeal process; 701 KAR 8:030

Charter school student application, lottery, and enrollment; 701 KAR 8:010

Conversion charter school petition, conversion, and operation; 701 KAR 8:040

Valuation of charter school authorizers; 701 KAR 8:020

Learning Support Services

Repeal of 704 KAR 7:050

Office of Instruction

Kentucky framework for personnel evaluation; 704 KAR 3:370

Personnel System for Certified and Equivalent Employees

Attendance, compensatory time, and leave for certified and equivalent service; 780 KAR 3:072

Extent and duration of school term, use of school day and extended employment; 780 KAR 3:080

School Terms, Attendance and Operation

Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

EDUCATION AND WORKFORCE DEVELOPMENT

For Education, see listing below:

Education; KAR Titles 702, 704, and 780 (*See Education*)

Education Professional Standards Board; KAR Title 16 (*See Education Professional Standards Board*)

Higher Education Assistance Authority; KAR Title 11 (*See Higher Education Assistance Authority*)

SUBJECT INDEX

Libraries and Archives; KAR Title 725 (*See Libraries and Archives*)
Postsecondary Education; KAR Title 13 (*See Postsecondary Education*)
For Workforce Development, see listing below:
Workplace Standards (*See Workplace Standards*)

EDUCATION PROFESSIONAL STANDARDS BOARD
Standards for certified teacher leader; 16 KAR 1:016

ELECTION FINANCE
Reports and Forms
Election Finance Statement – State Executive Committee Building Fund; 32 KAR 1:045
Statement of spending intent, appointment of campaign treasurer; 32 KAR 1:020

ELECTIONS
See also Election Finance; KAR Title 32
Forms and Procedures
Absentee voting in county clerk's office; 31 KAR 4:040
Voter identification cards; 31 KAR 4:010
Help America Vote Act 2002
Provisional voting; 31 KAR 6:020

EMBALMERS AND FUNERAL DIRECTORS
Apprenticeship and supervision requirements; 201 KAR 15:050
Establishment criteria; 201 KAR 15:110
Fees; 201 KAR 15:030

ENERGY AND ENVIRONMENT CABINET
See listing below for specific subject headings:
Environmental Protection, KAR Title 401
Natural Resources
Forestry, KAR Title 402 (Forestry)
Surface Mine Reclamation and Enforcement, KAR Title 405
Oil and Gas, KAR Title 805
Waste Management; KAR Title 401, Various Chapters (*See Waste Management*)

ENVIRONMENTAL PROTECTION
Division of Air Quality
New Source Standards
New indirect heat exchangers; 401 KAR 59:015
Existing Source Standards
Existing indirect heat exchangers; 401 KAR 61:015

FINANCE AND ADMINISTRATION CABINET
Office of the Controller
Repeal of 200 KAR 38:020 and 201 KAR 38:030; 200 KAR 38:021
See Revenue; Title 103

FISH AND WILDLIFE RESOURCES
Fish
Asian Carp and Scaled Rough Fish Harvest program; 301 KAR 1:152
Commercial fishing requirements; 301 KAR 1:155
Live bait for personal use; 301 KAR 1:130.
Repeal of 301 KAR 1:085; 301 KAR 1:086
Repeal of 301 KAR 1:192; 301 KAR 1:195
Taking of fish by nontraditional fishing methods; 301 KAR 1:410
Taking by traditional fishing methods; 301 KAR 1:201
Game
Transportation and holding of live native wildlife; 301 KAR 2:081
Wildlife rehabilitation permit; 301 KAR 2:075
Hunting and Fishing
Commercial nuisance wildlife control; 301 KAR 3:120
License, tag, and permit fees; 301 KAR 3:022
Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049
Licensing

License agent applications and agreements; 301 KAR 5:010
License agent requirements and responsibilities; 301 KAR 5:020
Water Patrol
Boat registration fees; 301 KAR 6:005

FINANCIAL INSTITUTIONS
Credit Unions
Conduct; 808 KAR 3:050

FORESTRY
Timber sales; 402 KAR 3:010
Timber harvesting operations, management practices; 402 KAR 3:030

GEOLOGISTS, PROFESSIONAL
Fees; 201 KAR 31:010

HAIRDRESSERS AND COSMETOLOGISTS
Administrator's duties; 201 KAR 12:010
Education requirements and school administration; 201 KAR 12:082
Sanitation standards; 201 KAR 12:100

HEALTH AND FAMILY SERVICES
See listing below for specific subject headings:
Community Based Services; KAR Title 921
Health Benefit Exchange; KAR Title 900
Health Policy; KAR Title 900
Inspector General (Health); KAR Title 902
Medicaid Services; KAR Title 907
Public Health; KAR Title 902
Office of the Secretary (Health); KAR Title 900

HEALTH BENEFIT EXCHANGE
Kentucky Health Benefit Exchange
Repeal of 900 KAR 10:030 and 900 KAR 10:100; 900 KAR 10:031

HEALTH POLICY
Certificate of Need
Certificate of Need criteria for physician exemption; 900 KAR 6:130
Filing, hearing, show cause hearing; 900 KAR 6:090
State Health Plan
State Health Plan for facilities and services; 900 KAR 5:020

HELP AMERICA VOTE ACT 2002
See Elections; 31 KAR Chapter 6

HIGHER EDUCATION ASSISTANCE AUTHORITY
Kentucky Higher Education Assistance Authority
Student aid applications; 11 KAR 4:080
Kentucky Educational Excellence Scholarship Program
Kentucky Educational Excellence Scholarship (KEES) program; 11 KAR 15:090

HOUSING, BUILDINGS AND CONSTRUCTION
Division of Plumbing, Boiler Section
Boilers and Pressure Vessels
Definitions for 815 KAR Chapter 15; 815 KAR 15:010
Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors; 815 KAR 15:026
Fees and certificates for boiler and pressure vessel inspection; 815 KAR 15:027
New installations, general design, construction, and inspection criteria for boilers, pressure vessels, and pressure piping; 815 KAR 15:025
Repeal of 815 KAR 15:040, 815 KAR 15:051, and 815 KAR 15:060; 815 KAR 15:041

SUBJECT INDEX

HUNTING

See Fish and Wildlife; KAR Title 301

INSPECTOR GENERAL (HEALTH)

Controlled Substances

Schedule II prescription for - authorization of oral prescriptions for immediate administration, fax transmission, partial filing; 902 KAR 55:095

Schedules of; 902 KAR 55:015

Excluded nonnarcotic substances; 902 KAR 55:040

Monitoring system for prescriptions of; 902 KAR 55:110

Repeal of 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035; 902 KAR 55:041

Services and Facilities

Abortion facilities; 902 KAR 20:360

Hospitals; operations and services; 902 KAR 20:016

INSURANCE

Agents, Consultants, Solicitors and Adjusters

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

Authorization of Insurers and General Requirements

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

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

Domestic Stock and Mutual Insurers

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

Group and Blanket Health Insurance

Group health insurance coordination of benefits; 806 KAR 18:030

Repeal of 806 KAR 18:010; 806 KAR 18:011

Investments

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

Kinds of Insurance; Limits of Risk; Reinsurance

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

Motor Vehicle Reparations (No-fault)

Kentucky No-Fault Form; 806 KAR 39:030

JAILS

See Corrections; 501 KAR Chapter 6

JUSTICE AND PUBLIC SAFETY CABINET

See also Corrections; KAR Title 501

Breath Analysis Operators

Administration of breath alcohol tests and chemical analysis tests; 500 KAR 8:030

Certification of breath alcohol analysis instrument operators; 500 KAR 8:010

Kentucky Law Enforcement Council

Peace officer, telecommunicator, and court security officer professional standards; 503 KAR 1:140

See Juvenile Justice; KAR Title 505

JUVENILE JUSTICE

Parole Board

Department of Juvenile Justice Policies and Procedures: juvenile services in community; 505 KAR 1:130

Department of Juvenile Justice Policies and procedures:

Prison Rape Elimination Act of 2003 (PREA); 505 KAR 1:170

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Governor's Commission on Fire Protection Personnel Standards

Commission on Fire Protection Personnel Standards and Education

Volunteer fire department aid; 739 KAR 2:050

LABOR CABINET

See listing below for specific subject headings:

Workplace Standards; KAR Title 803

LIBRARIES AND ARCHIVES

Libraries

Certification renewal of public librarians; 725 KAR 2:070

LICENSED PROFESSIONAL COUNSELORS

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

Complaint management process; 201 KAR 36:050

Continuing education requirements; 201 KAR 36:030

Licensed professional clinical counselor supervisor; 201 KAR 36:065

Qualifying experience under supervision; 201 KAR 36:060

Reciprocity requirements for applicants licensed or certified in another state; 201 KAR 36:072

MILITARY AFFAIRS

Military Assistance Trust Funds

Survivor Benefits for death of a National Guard or Reserve Component member; 106 KAR 2:040

MEDICAID SERVICES

Managed Care

Definitions for 907 KAR Chapter 17; 907 KAR 17:005

External independent third-party; 907 KAR 17:035

Managed care organization requirements and policies relating to enrollees; 907 KAR 17:010

Managed care organization requirements and policies relating to providers; 907 KAR 17:015

Managed care organization service and service coverage requirements and policies; 907 KAR 17:020

Repeal of 907 KAR 17:026 and 907 KAR 17:030; 907 KAR 17:026

Medicaid Services

Advanced Practice Registered Nurse:

Reimbursement for; 907 KAR 1:104

Services; 907 KAR 1:102

Community mental health center:

Reimbursement; 907 KAR 1:045

Services; 907 KAR 1:047

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

Payment/Services

Nonemergency medical transportation waiver; 907 KAR 3:066

Physicians' Services:

Coverage; 907 KAR 3:005

Reimbursement; 907 KAR 3:010

MEDICAL IMAGING AND RADIATION THERAPY

Administrative subpoena; 201 KAR 46:095

Definitions for 201 KAR Chapter 46.

Fees; 201 KAR 46:020

Limited x-ray machine operator; 201 KAR 46:081

Practice standards, scopes of practice, and ethical standards; 201 KAR 46:035

MEDICAL LICENSURE

Professional standards for prescribing and dispensing controlled substances; 201 KAR 9:260

MINING - PERMITS

Bond and Insurance Requirements

Definitions for 405 KAR Chapter 10; 405 KAR 10:001

General Provisions

Assessment of civil penalties; 405 KAR 7:095

Definitions for 405 KAR Chapter 7; 405 KAR 7:001

Inspection and Enforcement

Definitions for 405 KAR Chapter 12; 405 KAR 12:001

Oil and Gas; *KAR Title 805 (See Oil and Gas)*

Permits

Definitions for 405 KAR Chapter 8; 405 KAR 8:001

General provisions for permits; 405 KAR 8:010.

Permits for special categories of mining; 405 KAR 8:050

Underground coal mining permits; 405 KAR 8:040

Performance Standards for Surface Mining Activities

SUBJECT INDEX

Definitions for 405 KAR Chapter 16; 405 KAR 16:001
Surface and groundwater monitoring; 405 KAR 16:110
Performance Standards for Underground Mining Activities
Casing, sealing underground openings; 405 KAR 18:040
Definitions for 405 KAR Chapter 18; 405 KAR 18:001
General hydrologic requirements; 405 KAR 18:060
General provisions; 405 KAR 18:010
Surface and groundwater monitoring; 405 KAR 18:110
Special Performance Standards
Definitions for 405 KAR Chapter 20; 405 KAR 20:001
In situ processing; 405 KAR 20:080
Underground only permits; 405 KAR 20:090

MINING - SAFETY

Miner Training, Education and Certification
Annual retraining; 805 KAR 7:030
Program approval; 805 KAR 7:060
Training and certification of inexperienced miners; 805 KAR 7:020
Training of miners for new work assignments; 805 KAR 7:050
Training of newly employed miners; 805 KAR 7:040
Sanctions and Penalties
Criteria for the imposition and enforcement of sanctions against certified miners; 805 KAR 8:030
Criteria for the imposition and enforcement of sanctions against noncertified personnel; 805 KAR 8:050
Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises; 805 KAR 8:040

NATURAL RESOURCES

Coal Bed Methane
Repeal of 805 KAR 9:040; 805 KAR 9:041
Forestry, *KAR Title 402 (See Forestry)*
Mining - Permits; *KAR Title 405 (See Mining - Permits)*
Mining - Safety; *805 KAR Chapters 7 & 8 (See Mining - Safety)*

NURSING

Advanced Practice Registered Nurses
Delegation of nursing tasks; 201 KAR 20:400
Enhanced nurse licensure compact; 201 KAR 20:505E
Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder; 201 KAR 20:065
Retired nurse licensure status; 201 KAR 20:095
Scope and standards of practice of; 201 KAR 20:057

OCCUPATIONS AND PROFESSIONS

See listing below for specific subject headings:
See also Boards and Commissions
Geologists, Professional; 201 KAR Chapter 31

OCCUPATIONAL THERAPY

Continuing competence; 201 KAR 28:200
Telehealth services; 201 KAR 28:235

OFFICE OF THE GOVERNOR

Department of Veterans' Affairs
Charges for room and board, goods and services at state veterans nursing homes; 17 KAR 3:020

OFFICE OF THE SECRETARY

Medical Review Panels
Medical review panels; 900 KAR 11:010

OIL AND GAS

Plugging wells; 805 KAR 1:060
Repeal of 805 KAR 1070; 805 KAR 1:071

OPHTHALMIC DISPENSERS

Licensing; application, examination, experience, renewal, and inactive status; 201 KAR 13:040
Military service; reciprocity; endorsement; 201 KAR 13:060

PERSONNEL CABINET

PERSONNEL BOARD
Probationary periods; 101 KAR 1:325
Office of the Secretary: Personnel Cabinet, Classified
2018 Plan year handbook for the public employee health insurance program; 101 KAR 2:210

PHARMACY

Outsourcing facility; 201 KAR 2:400
Protocols, board authorized; 201 KAR 2:380
Third-party logistics provider; 201 KAR 2:390

PHYSICAL THERAPY

Eligibility and credentialing procedure; 201 KAR 22:020
Foreign-educated physical therapists, requirements; 201 KAR 22:070
Renewal or reinstatement of a credential for physical therapist or physical therapist assistant; 201 KAR 22:040

POSTSECONDARY EDUCATION

Public Educational Institutions
Allocation of state general fund appropriations to:
Kentucky community and technical college system institutions; 13 KAR 2:130
Public universities; 13 KAR 2:120
Adult Education and Literacy
GED® eligibility requirements; 13 KAR 3:050

PUBLIC HEALTH

Public Health Protection and Safety
Technologically enhanced naturally occurring radioactive material related to oil and gas development; 902 KAR 100:180

PUBLIC PROTECTION CABINET

See listing below for specific subject headings:
Alcoholic Beverage Control; *KAR Title 804*
Financial Institutions; *KAR Title 808*
Housing Buildings and Construction; *KAR Title 815*
Insurance; *KAR Title 806*

REVENUE

General Administration
Deductibility of the Massachusetts corporate excise tax and West Virginia business and occupations tax in computing a corporation's net income; 103 KAR 16:360
Nexus standard for corporations and pass-through entities; 103 KAR 16:240
Employee access to federal tax information (FTI); 103 KAR 1:120
Income Tax; Corporations
Repeal of 103 KAR 16:390 and 103 KAR 16:020; 103 KAR 16:391
Income Tax; General Administration
Filing dates and extensions; 103 KAR 15:050
Income Tax; Individual
Repeal of 103 KAR 17:150; 103 KAR 17:151
Income Tax; Withholding
Supplemental wages and other payments subject to withholding; 103 KAR 18:070
Sales and Use Tax; Service and Professional Occupations
103 KAR 26:120. Advertising agencies; 103 KAR 26:120
Motor carrier repair and replacement parts; 103 KAR 26:110
Sales and Use Tax; Miscellaneous Retail Transactions
Collection of sales tax on certain motor vehicle sales; 103 KAR 28:150
Leases and rentals; 103 KAR 28:051
Sales and Use Tax; Administration and Accounting
Alternative fuel, gasification, and renewable energy facility refunds on construction costs; 103 KAR 31:190

SUBJECT INDEX

Direct pay authorization; 103 KAR 31:030
Disaster area relief sales and use tax refunds; 103 KAR 31:170
Energy efficiency projects; 103 KAR 31:200
Rebate for governmental public facility; 103 KAR 31:102
Returned merchandise; 103 KAR 31:050
Sales and purchases for resale; 103 KAR 31:111
Signature project refunds on construction costs; 103 KAR 31:180
Sales and Use Tax; General Exemptions
Sales to the federal government; 103 KAR 30:235
Sales and Use Tax; Miscellaneous Retailer Occupations
Vending machines; 103 KAR 27:180
Selective Excise Tax; Cigarettes
Retention of records; 103 KAR 41:120
Selective Excise Tax; Motor Vehicle Usage
Incorrect statement of origin or certificate of title; 103 KAR 44:120
Motor vehicle usage tax valuation; 103 KAR 44:060
Procedures for refund based on vehicle condition; 103 KAR 44:100
Taxation of loaner and rental motor vehicles; 103 KAR 44:070
Tax Increment Financing
Repeal of 103 KAR 50:020, 103 KAR 50:030 and 103 KAR 50:040; 103 KAR 50:021

TEACHERS' RETIREMENT SYSTEM

Application for retirement; 102 KAR 1:070

TRANSPORTATION CABINET

See Aviation; 602 KAR Chapter 15.

See Vehicle Regulation; 601 Chapter 23

TOURISM, ARTS AND HERITAGE CABINET

See listing below for specific subject headings:

Fish and Wildlife Resources; KAR Title 301

VEHICLE REGULATION

Certification of Title

Military surplus vehicle; 601 KAR 23:020

WASTE MANAGEMENT

Certificates of Environmental Safety and Public Necessity

Repeal of 410 KAR 1:010 & 410 KAR 1:020; 410 KAR 1:002

Generators of Hazardous Waste, Standards Applicable to

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; 401 KAR 32:002

Hazardous Waste Permitting Process

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, 401 KAR 38:500; 401 KAR 38:002

Hazardous Waste Fees

Definitions for 401 KAR Chapter 39; 401 KAR 39:005

Repeal of 401 KAR 39:100 and 401 KAR 39:110; 401 KAR 39:011

General requirements; 401 KAR 39:060

Hazardous waste handlers; 401 KAR 39:080

Hazardous waste permit program; 401 KAR 39:090

Permit review, determination timetables, and fees; 401 KAR 39:120

Identification and Listing of Hazardous Waste

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; 401 KAR 31:002

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

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; 401 KAR 35:002

Land Disposal Restrictions

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; 401 KAR 37:002

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

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; 401 KAR 34:002

Solid Waste Facilities, Standards for

Definitions related to 401 KAR Chapter 48; 401 KAR 48:005

Operating requirements for contained landfills; 401 KAR 48:090

Special Collection System Wastes, Standards for

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; 401 KAR 43:002

Special Waste

Special waste permit-by-rule; 401 KAR 45:060

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

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; 401 KAR 36:002

Transporters of Hazardous Waste, Standards Applicable to

Repeal of 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030; 401 KAR 33:002

Used Oil, Standards for the Management of

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; 401 KAR 44:002

WORKPLACE STANDARDS

Division of Wages and Hours

Labor Standards; Wages and Hours

Child labor; 803 KAR 1:100

Repeal of 803 KAR 1:030 and 803 KAR 1:040; 803 KAR 1:121

Kentucky Labor Management Matching Grant Program

Repeal of 803 KAR 6:010; 803 KAR 6:011

Office of Instruction

Kentucky framework for personnel evaluation; 704 KAR 3:370

Occupational Safety and Health

Toxic and hazardous substances; 803 KAR 2:425

SUBJECT INDEX